United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7472

United States Court of Appeals

For the Second Circuit

B

TOMAS ROSARIO, OVIDIO VEGA and RAY CABEL,

Plaintiffs-Appellees,

against

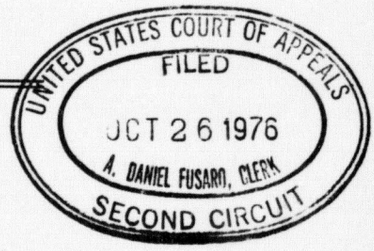
AMALGAMATED LADIES' GARMENT CUTTERS' UNION, LOCAL 10 of I.L.G.W.U. and INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO,

Defendants-Appellants.

JOINT APPENDIX

VOLUME I OF TWO VOLUMES

EXHIBITS 1 to 15(b) — Pages JA1 to JA266



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PAGINATION AS IN ORIGINAL COPY

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Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JA 1

TOMAS ROSARIO, OVIDIO VEGA and RAY CABEL,	:	76 Civ. 3204 (CBM)
Plaintiffs,	:	NOTICE OF APPEAL
-against-	:	
AMALGAMATED LADIES' GARMENT CUTTERS' UNION, LOCAL 10 of I.L.G.W.U. and INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO,	:	
Defendants.	:	

Notice is hereby given that Amalgamated Ladies' Garment Cutters' Union, Local 10 of I.L.G.W.U., and International Ladies' Garment Workers' Union, AFL-CIO, the defendants above named, hereby jointly appeal to the United States Court of Appeals for the Second Circuit from the order of this Court made in this case on the 20th day of September 1976, granting a temporary injunction and from each and every part of said order.

Dated: September 21, 1976

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MAX ZIMNY
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To: Clerk, U. S. District Court
Southern District of New York

Clerk, United States Court of Appeals
for the Second Circuit

Burton H. Hall, Esq.
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Exhibit 2

JA 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TOMAS ROSARIO, OVIDIO VEGA and RAY CABEL,

Plaintiffs,

-against-

AMALGAMATED LADIES' GARMENT CUTTERS' UNION, LOCAL 10, OF I.L.G.W.U. and INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO,

Defendants.

76 Civ. 3294 (CLM)

ORDER

Plaintiffs' motion in this action for preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, to enjoin defendants from giving effect to the action of defendant Local 10 in suspending plaintiffs from attending membership meetings, pending final disposition of this action, came on to be heard September 8, 14 and 17, 1976; and the Court having made its Findings of Fact and Conclusions of Law on September 17, 1976, it is

ORDERED AND DECREED that defendants, their officers, agents, employees and attorneys, and all persons in active concert or participation with any of them, be and they hereby are enjoined and restrained, upon the posting of security in the sum of $ ——, from giving any force or effect to the disciplinary punishment of suspension from attending membership meetings imposed upon plaintiffs by the Trial Committee of defendant Local 10 on or about January 29, 1976, pending trial and ultimate disposition of this action.

Dated: New York, N.Y.
September 20, 1976

Constance Baker Motley

BEST COPY AVAILABLE

Exhibit 3

JA 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

TOMAS ROSARIO, OVIDIO VEGA and RAY CABEL,

Plaintiffs,

-against-

76 Civ. 3204

AMALGAMATED LADIES' GARMENT CUTTERS' UNION, LOCAL 10 of I.L.G.W.U. and INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO,

Defendants.

----------x

APPEARANCES

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CONSTANCE BAKER MOTLEY, D.J.

MEMORANDUM OPINION

Plaintiffs bring this action under Title I of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. § 401, et seq., invoking the court's jurisdiction under 29 U.S.C. § 412. Besides their claim for damages and permanent injunctive relief, they have also moved for an order preliminarily enjoining defendants from giving any force or effect to a disciplinary ruling imposed upon plaintiffs by a Trial Committee of defendant Local 10, pending a determination of this action. The motion is granted, after hearings and argument conducted on September 8, 14, and 17, 1976.

Plaintiffs contend that the punishment imposed on them suspending them from participation in certain union activities is invalid for several reasons: (1) that plaintiffs were denied a full and fair hearing on the charges against them, as required by 29 U.S.C. § 411(a)(5), in that (a) they were denied the right to make their own record of the disciplinary proceedings, whether by tape recording, public stenographer, or court reporter, (b) they were excluded from their trial on January 8, 1976, solely because of their insistence on their alleged right to make such a record, and (c) they were denied access to the minutes of two prior disciplinary proceedings (previously reversed on procedural grounds by union appellate tribunals) which they considered necessary for proper preparation of their defense. They further contend (2) that the punishment was imposed upon them in retaliation for their exercise of rights guaranteed to them

by 29 U.S.C. § 411(a)(1) and (2), specifically for their exercise of the right to criticize the incumbent union officials. Finally, they contend (3) that the punishment imposed, by its own terms, is violative of the LMRDA in that it prevents the plaintiffs from exercising certain rights attendant upon union membership, yet falls short of suspending them from union membership.

While there appear to be some areas of factual dispute, it is acknowledged that plaintiffs did insist upon the right to bring a tape recorder to their disciplinary hearings, both on December 18, 1975 and January 8, 1976, and also at their appeal hearing on April 8, 1976. It is also uncontested that both the Trial Committee of Local 10 (at the December and January hearings) and the Appeal Committee of the General Executive Board ("GEB") of the parent International Ladies' Garment Workers' Union, AFL-CIO ("ILGWU") (at the April hearing) refused to conduct the disciplinary proceedings in the presence of plaintiffs, so long as they insisted on bringing a tape recorder. It is clear from the evidence thus far adduced that plaintiffs would not have been allowed to bring a public stenographer to the hearings at their own expense, even if they had requested permission to do so, although they would have been allowed to make their own notes of the proceedings.

The result of plaintiffs' refusal to accede to the demand that they not bring a tape recorder was that the Local's Trial Committee withdrew to another room to consider the

merits of the charges, without the presence of the plaintiffs, on January 9. It is not clear whether plaintiffs would have been allowed to enter the hearing room if they had agreed not to bring their tape recorders; the facts are in dispute. It is clear that, on or about January 29, 1976, the Trial Committee found plaintiffs guilty of violations of the union constitution stemming from an incident at the office of the Local's manager on January 29, 1975.

It is also clear that, on April 8, 1976, the GEB Appeal Committee met to consider plaintiffs' appeals, but refused to do so until such time as plaintiffs agreed to come to the hearing without a tape recorder. Because of plaintiffs' refusal to come to the appeal under such conditions, the appeal of this trial has never been determined.

It seems clear to the court that plaintiffs have not raised a frivolous issue. The court is convinced that the question of the member's right to make his own record of the proceedings for purposes of intra-union appeals is a serious one, irrespective of the absence of any such provision in the union's constitution. See Kiepura v. Local Union 1091, United Steelworkers of America, 358 F.Supp. 987, 991-2 (N.D.Ill. 1973). Particularly since, in this case, two prior Local union findings of guilt have been reversed on procedural grounds by the union's appellate bodies, the court finds a substantial basis for plaintiffs' contention of procedural impropriety in the defendants' failure to allow plaintiffs the use of a tape recorder or stenographer to make their own record of the disciplinary proceedings.

Even if this were the only ground alleged by plaintiffs as the basis for injunctive relief, the court could find that they have raised "sufficiently serious questions going to the merits to make them a fair ground for litigation". Sonesta International Hotels Corp. v. Wellington Associates, et al., 483 F.2d 247, 250 (2d Cir. 1973).

Moreover, the court finds that the plaintiffs face the prospect of irreparable injury, with the balance of hardships tipping decidedly in their favor, should the court fail to grant the requested relief. A quarterly membership meeting of the Local is scheduled for the evening of September 20, 1976 and plaintiffs would be prohibited from attending this meeting by the terms of the punishment to which they are currently subject. The right to attend such an important meeting ought not to be deprived in the face of the serious questions which have been raised in this suit.

The above findings of fact and conclusions of law supplement the court's oral rulings made at the hearing on September 17, 1976. The court's order is set forth separately.

Dated: New York, New York
September 20, 1976

Constance Baker Motley
CONSTANCE BAKER MOTLEY
U. S. D. J.

Exhibit 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TOMAS ROSARIO, OVIDIO VEGA and RAY CABEL,

Plaintiffs

-against-

AMALGAMATED LADIES' GARMENT CUTTERS' UNION, LOCAL 10 OF I.L.G.W.U. and INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO,

Defendants.

COMPLAINT

Plaintiffs, complaining of defendants, by their attorney, allege:

1. Plaintiffs bring this action under Title I of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401, et seq., (hereinafter the LMRDA). Jurisdiction over this action is conferred upon the Court by Section 102 of the LMRDA, 29 U.S.C. 412.

2. Defendant AMALGAMATED LADIES' GARMENT CUTTERS' UNION, LOCAL 10 OF I.L.G.W.U. (hereinafter Local 10) is and at all times herein mentioned has been an unincorporated association of more than ten members, to wit: a labor organization, and a local labor organization engaged in an industry affecting commerce within the meaning of the LMRDA, and the recognized or certified representative of employees under the provisions of the National Labor Relations Act, as amended. Local 10 maintains its principal office at 218 West 40th Street, New York, N.Y., within the geographical jurisdiction of this Court. Plaintiffs are and at all times herein mentioned have been members of Local 10.

3. Defendant INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO (hereinafter International) is and at all times herein mentioned has been a national or international labor organization engaged in an industry affecting commerce within the meaning of the LMRDA, comosed of Local 10 and otheer local labor organizations, and an unincorporate association with a membership of more than

ten persons. International maintains its principal office at 1710 Broadway, in the City, County and State of New York and within the geographical jurisdiction of this Court.

4. Another action, brought by the three plaintiffs against Local 10, its former Manager, and the City of New YOrk, concerning matters related to the facts set forth herein, is presently pending before this Court, captioned: Tomas Rosario, et al. v. Abe Dolgen, individually and as Manager, etc., et al., Docket No. 75 Civ. 4632 (CBM). The facts complained of herein, however, occurred subsequent to the filing of the complaint in that action.

5. In or about October 1975, the defendant International, by its General Executive Board, directed Local 10 to subject the three plaintiffs to a third disciplinary trial on charges that had been filed against them by the then-Manager of Local 10, Abe Dolgen, on February 10, 1975.

6. Prior to October 1975, plaintiffs had already been subjected to two disciplinary trials, and to two periods of disciplinary punishment, on the same charges as those referred to in paragraph 5 above.

7. Local 10 scheduled a regular membership meeting for Novebmer 24, 1975, at which a trial committee to conduct the third trial of plaintiffs was to be elected.

8. Local 10 failed to give to its members full notification of the date and holding of the November 24, 1975 membership meeting and as a result of such failure the actual attendance by members at the said meeting was unusually low and allowed for a greater than usual domination of the meeting by the incumbent officers of Local 10.

9. The membership meeting scheduled for November 24, 1975 was held on that date and a trial committee was elected, but over the objections of the plaintiffs the trial committee was elected by an open hand vote and in such manner that persons selected

and hand-picked by the Manager of Local 10 and by others allied with him, were elected.

10. The persons elected to the trial committee as described in paragraph 9 did in fact comprise the trial committee referred to and described hereinbelow. Each of them was and is allied with the incumbent officialdom of Local 10 and biased against each of plaintiffs because of the plaintiffs' opposition to the officers.

11. Pursuant to notice sent by or on behalf of the said trial committee, the three plaintiffs appeared for trial on the charges on December 18, 1975.

12. Prior to December 18, 1975, the three plaintiffs demanded and requested of the trial committee that they be supplied with copies of the official minutes of the previous trials already conducted on the charges against them. Their request and demand was denied and they have not been supplied with copies of the said official minutes.

13. Upon appearing for trial on December 18, 1975, the three plaintiffs demanded the right to make an accurate record of proceedings by the use of a tape recorder. It would have been futile for them to have appeared, alternatively, with a court reporter or competent stenographer for the purpose of making a record, and the futility of such an appearance was made manifest by previous statements and denials of their previous requests.

14. The trial committee, on December 18, 1975, arbitrarily, without good reason, and over plaintiffs' objections, terminated the hearing scheduled for that day and adjourned the trial of plaintiffs to January 8, 1976.

15. The three plaintiffs appeared for trial on the aforesaid charges on January 8, 1976, and again demanded the right to make an accurate record of the trial proceedings by the use of a tape recorder. Their demand was arbitrarily and without good reason rejected by the trial committee.

JA 11

16. The trial committee, while the three plaintiffs were present, arbitrarily and without good reason refused to conduct or to open the trial of the three plaintiffs in their presence; and instead of opening the trial, the trial committee got up, walked out of the room, entered another from which plaintiffs were excluded, locked the door, and proceeded to conduct whatever trial there has been of the three plaintiffs.

17. Because of the exclusion of plaintiffs from the room in which their trial took place, plaintiffs were denied the right to confront and cross-examine the witnesses against them, the right to hear what those witnesses testified to, the right to produce and examine witnesses testifying on their own behalf, the right to testify in their own defense, and the right to appear before the trial body.

18. Despite demands made by plaintiffs, the trial committee further failed to make or to have made an accurate stenographic or other record of the proceedings.

19. For all the reasons set forth above, plaintiffs were and have been denied a fair trial and, in particular, were denied a full and fair hearing on the charges against them.

20. On or about January 29, 1976, the trial committee rendered a decsion, based upon whatever trial was conducted in the room from which plaintiffs were excluded, as set forth inparagraph 16, and disciplinarily punished plaintiffs by suspending plaintiffs Rosario and Vega from the right to attend membership meetings of Local 10 for a period of 18 months beginning January 8, 1976 and suspending plaintiff Cabel from the right to attend membership meetings of Local 10 for a period of 12 months beginning January 8, 1976.

21. Neither of the plaintiffs has been suspended, or expelled, or has voluntarily withdrawn from membership in Local 10, and each of the plaintiffs is, remains, and at all times herein mentioned has been a member of Local 10.

22. Plaintiffs were subjected to charges, to disciplinary proceedings, and to disciplinary punishment, all as described above, because of their expression of views, arguments and opinions critical of the incumbent officialdom of Local 10 and because of the candidacies in elections of officers of Local 10, and their support of other candidates. in opposition to such incumbent officials.

23. For the reasons set forth above, the disciplinary punishment imposed upon plaintiffs as aforesaid was and is in violation of Sections 101(a)(1) and (2) and 102 of the LMRDA, 29 USC 411(a)(1) and (2) and 412, in that it infringes plaintiffs' rights, as members of the labor organization, to attend and participate equally with other members at membership meetings, and to express views, arguments and opinions at such meetings; and was imposed in violation of Section 101(a)(5) of the LMRDA, 29 USC 411(a)(5) in that plaintiffs were denied a full and fair hearing; and was imposed in violation of Section 609 of the LMRDA, 29 USC 529, in that it was imposed because of plaintiffs' exercise of rights guaranteed them under the LMRDA.

24. Unless otherwise ordered by this Court, the defendants will continue to enforce the disciplinary suspension of plaintiffs from their right to attend and participate in membership meetings, and plaintiffs will thereby suffer grievous and irreparable material injury and damage in the loss of valuable membership rights, for which there is no adequate remedy at law.

25. Plaintiffs have, for more than four months, exercized and exhausted all reasonable hearing and appellate remedies available to them within the labor organization, by appealing from the disciplinary punishment to the GEB Appeal Committee of the International, and by attending an appeal hearing, and by repeatedly requesting that the appeal hearing be continued and their appeal heard. No further appellate remedy is available to plaintiffs that can be completed within the next eleven months.

26. Any further attempt by plaintiffs to exhaust appellate remedies would be futile.

WHEREFORE, plaintiffs demand judgment:

1. permanently enjoining defendants, and each of them, their officers, agents, employees and attorneys and all persons in active concert or participation with any of them, from giving any force or effect to the disciplinary punishment imposed upon plaintiffs as aforesaid;

2. ordering and directing defendants to vacate the disciplinary suspensions of plaintiffs;

3. declaring the disciplinary suspensions of plaintiffs null and void;

4. ordering and directing defendants to accord plaintiffs all the rights and privileges of membership in Local 10 and International;

5. awarding plaintiffs such compensatory and punitive relief as may be appropriate; and

6. for the costs and necessary disbursements of this action, and for a reasonable attorneys' fee.

BURTON H. HALL
Attorney for Plaintiffs
401 Broadway
New York, N.Y., 10013

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Exhibit 5

JA 14

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TOMAS ROSARIO, OVIDIO VEGA and RAY CABEL,	:	
Plaintiffs,	:	76 Civ. 3204 (CBM)
-against-	:	
AMALGAMATED LADIES' GARMENT CUTTERS' UNION, LOCAL 10 OF I. L. G. W. U. and INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO,	:	ANSWER OF AMALGAMATED LADIES' GARMENT CUTTERS' UNION, LOCAL 10 of ILGWU
Defendants.	:	

Defendant, Amalgamated Ladies' Garment Cutters' Union, Local 10 of ILGWU (hereafter "Local 10"), answering the Complaint herein, by Emil Schlesinger, its attorney, respectfully alleges:

FIRST: Admits each and every allegation contained in Paragraphs of the Complaint numbered 2, 7, 11 and 21.

SECOND: Denies each and every allegation in Paragraphs of the Complaint numbered 8, 14, 16, 17, 18, 19, 22, 23, 25, 26 and denies that plaintiffs are entitled to any of the relief set forth in the WHEREFORE clause of the Complaint.

THIRD: Admits the allegation in Paragraph 1 of the Complaint that plaintiffs allegedly bring this action under Title I of the LMRDA, but, except as herein expressly admitted, denies each and every other allegation in Paragraph 1 of the Complaint.

FOURTH: Admits that International Ladies' Garment Workers' Union, AFL-CIO is an unincorporated international labor organization of more than 10 members with its principal office at 1710 Broadway, New York, New York 10019, and that its members are engaged in industries affecting commerce within the meaning of the LMRDA and that autonomous subordinate

labor organizations, such as defendant Local 10, are affiliated with it, and, except as herein expressly admitted, denies each and every other allegation in Paragraph 3 of the Complaint.

FIFTH: Admits that there is pending in this Court an action captioned "Tomas Rosario, Ovidio Vega and Ray Cabel against Abe Dolgen individually and as Manager of Amalgamated Ladies' Garment Cutters' Union, Local 10, International Ladies' Garment Workers' Union, and the City of New York," Docket 75 Civ. 4632 (CBM) and, except as herein expressly admitted, denies each and every other allegation in Paragraph 4 of the Complaint.

SIXTH: Admits that on October 8, 1975 the General Executive Board of International Ladies' Garment Workers' Union rendered a decision ordering that the charges against plaintiffs dated and filed February 10, 1975 and redated and refiled on May 8, 1975 preferred against them by Abe Dolgen, as a member of Local 10 (copies of which are annexed hereto as Exhibits A-1 and A-2) should be reheard de novo by a Trial Committee of Local 10 for the reasons set forth in the said decision and under the express stipulations and conditions set forth therein. (A copy of the aforesaid decision is attached hereto as Exhibit B). Except as expressly admitted herein, denies each and every other allegation in Paragraph 5 of the Complaint.

SEVENTH: With respect to Paragraph 6 of the Complaint, defendant alleges that the averments therein are irrelevant, immaterial and incompetent because it alleges two disciplinary trials which are the subject matter of the other action pending in this court set forth above in Paragraph 5 herein. Reference is made to the allegations in the last sentence in Paragraph 4 of the Complaint, to wit: "The facts complained of herein, however, occurred subsequent to the filing of the complaint in that action."

EIGHTH: Admits that a membership meeting of Local 10, scheduled for November 24, 1975 was held on that day and a Trial Committee was elected

by an open hand vote and, except as herein expressly admitted, denies each and every other allegation in Paragraph 9 of the Complaint.

NINTH: Admits that the persons elected as a Trial Committee at the membership meeting of Local 10 did comprise the Trial Committee to hear the charges preferred by Dolgen as a member of Local 10 against the plaintiffs herein and, except as herein expressly admitted, denies each and every other allegation in Paragraph 10 of the Complaint.

TENTH: Admits that "prior to December 18, 1975, the three plaintiffs demanded and requested of the trial committee that they be supplied with copies of the official minutes of the previous trials already conducted on the charges against them" and, except as herein expressly admitted, denies each and every other allegation in Paragraph 12 of the Complaint.

ELEVENTH: Admits that the three plaintiffs appeared for hearing on the aforesaid charges (Exhibits A-1 and A-2 annexed) on December 18, 1975, and that they attempted to tape record the hearing and that they were denied the right to do so and, except as herein expressly admitted, denies each and every other allegation in Paragraph 13 of the Complaint.

TWELFTH: Admits that the three plaintiffs appeared for hearing on the aforesaid charges on January 8, 1976 and again attempted to tape record the hearing and they were denied the right to do so and, except as herein expressly admitted, denies each and every other allegation in Paragraph 15 of the Complaint.

THIRTEENTH: Admits that on January 29, 1976, the Trial Committee of Local 10 issued its decision on the charges preferred by Dolgen as an individual member of Local 10 against plaintiffs suspending plaintiffs Rosario and Vega from the right to attend and participate in any regular membership meetings of Local 10 for a period of 18 months from January 8, 1976, and suspending and barring Cabel from the right to attend and participate in any regular membership meetings of Local 10 for a period of 12 months from

January 8, 1976, and admits that the second charge against plaintiff Cabel was not sustained (a copy of the decision is annexed hereto as Exhibit C) and, except as herein expressly admitted, denies each and every other allegation in Paragraph 20 of the Complaint.

FOURTEENTH: Admits that Local 10 will continue to enforce the aforementioned discipline of plaintiffs unless otherwise ordered by this Court, and except as expressly admitted herein, denies each and every other allegation in Paragraph 24 of the Complaint.

FIRST DEFENSE

FIFTEENTH: The Complaint fails to state a claim on which relief may be granted.

SECOND DEFENSE

SIXTEENTH: This Court lacks jurisdiction of the subject matter of this action.

THIRD DEFENSE

SEVENTEENTH: The members of Local 10 have not authorized or ratified or in any other respect approved or confirmed the conduct, acts or decisions of the Trial Committee. Plaintiffs failure to allege that they have done so is fatal to the Complaint.

FOURTH DEFENSE

EIGHTEENTH: Plaintiffs have failed to exhaust all of their remedies within the ILGWU and, although they filed an appeal with the G B Committee of the International Ladies' Garment Workers' Union, the appeal has not yet been heard because plaintiffs insisted upon tape recording the hearing of the appeal in defiance of a ruling by the GEB Appeal Committee that the hearing may not be recorded, and refused to comply with the decision of the Committee.

NINETEENTH: The General Executive Board of the International Ladies' Garment Workers' Union has repeatedly notified the plaintiffs that the hearing of the appeal will be held without delay as soon as plaintiffs advise that they will comply with its ruling not to tape record the appeal.

FIFTH DEFENSE

TWENTIETH: Under the Constitution of the International Ladies' Garment Workers' Union which is also the Constitution of Local 10 there is no provision requiring the Executive Board of Local 10 acting as a Grievance Committee or any Trial Committee to have or permit a stenographer to take the minutes of a disciplinary hearing or to permit the accuser and/or the accused to tape record by any kind of electronic device any hearing in which they are involved.

TWENTY-FIRST: The decision of the GEB Appeal Committee dated October 8, 1975 (Exhibit C annexed) ordered that the Secretary of the Trial Committee shall take "the official minutes" of the hearing.

TWENTY-SECOND: It was within the sole province and jurisdiction of the Trial Committee to interpret the aforementioned order to mean that no tape recorder or stenographer (which plaintiffs never requested) be permitted to record the hearing.

SIXTH DEFENSE

TWENTY-THIRD: At the hearing on December 18, 1975 of the charges preferred against plaintiffs, the latter attempted to tape record the hearing. Upon objection by the lay representative of the accuser, the Trial Committee ruled unanimously that the hearing could not be tape recorded. Plaintiffs and their lay representatives refused to comply with the ruling.

TWENTY-FOURTH: The Trial Committee thereupon adjourned the meeting to January 8, 1976, i.e., three weeks, for the purpose of giving the plaintiffs an opportunity to decide whether they will appear without a tape recorder and ruled that if they persisted in tape recording the hearing

on the adjourned date the hearing would be held without them.

TWENTY-FIFTH: On the adjourned date, January 8, 1976, when the hearing was resumed, plaintiffs appeared again with a tape recorder and again willfully, deliberately and intentionally refused to comply with the Trial Committee's ruling not to tape the hearing.

TWENTY-SIXTH: Thereupon, solely because of the wrongful, willful, intentional and deliberate acts and conduct of the plaintiffs, who were attempting to prevent a hearing on the charges preferred against them from ever being held, except on their own terms, the Trial Committee, if there ever was to be a hearing, had no alternative but to proceed with the hearing without the accused recording the hearing with their tape recorder.

TWENTY-SEVENTH: Plaintiffs were afforded due process by the Trial Committee, but plaintiffs, of their own volition, decided not to accept it. The Trial Committee did consider a Statement signed and submitted by the three plaintiffs denying the charges against them and which contained the other assertions made therein. They could have proceeded with the trial in the room in which it was held if they had agreed to comply with the Trial Committee's ruling not to tape record the hearing.

SEVENTH DEFENSE

TWENTY-EIGHTH: Neither the Executive Board of Local 10 sitting as a Grievance Committee nor the Trial Committee elected by the membership is required to have or permit a stenographer to take the minutes or to permit the use of a tape recorder by it or by either the accuser or the accused in any disciplinary proceedings or to make an unofficial electronic record of the disciplinary proceedings in which they are involved.

TWENTY-NINTH: Only the secretary of the Grievance Committee or of the Trial Committee is authorized to take the official minutes of disciplinary proceedings. This does not prevent either the accuser or the accused from making their own handwritten notes of any matter at the hearing which

they may deem to be important and pertinent.

EIGHTH DEFENSE

THIRTIETH: The acts complained of were committed in the course of a labor dispute as defined in the Norris-LaGuardia Act, 29 U.S.C.A. §101 et seq.

THIRTY-FIRST: As required by said Act plaintiffs have failed to allege or actually ratify the acts complained of after actual knowledge thereof.

NINTH DEFENSE

THIRTY-SECOND: The decision of the Trial Committee dated January 29, 1976 (annexed hereto as Exhibit C) was not intended to and did not bar the plaintiffs from attending or partidipating in the meeting of Local 10 on May 17, 1976, at which meeting the minutes of the Executive Board of Local 10 on May 4, 1976, accepted the resignation of Abe Dolgen as Manager of Local 10 because of his retirement, effective June 30, 1976, and choosing Gerald Grossman to be the Manager of Local 10 for Dolgen's unexpired term (approximately 10 months) were to be read and subject to a motion to approve. It did not bar any of the plaintiffs from attending and participating in special meetings of cutters in the particular division or segment of the ladies' Garment and allied industries in which they are employed, such meetings not being regarded as regular meetings of the entire membership of Local 10.

THIRTY-THIRD: Each of the plaintiffs was invited by a letter dated May 7, 1976, addressed to each of them to attend a meeting of Local 10 at the Statler Hilton Hotel on Monday, May 17, 1976, in connection with approving the actions of the Executive Board of Local 10 on May 4, 1976, and plaintiffs Rosario and Cabel each were invited by letter dated May 17, 1976, to attend a special meeting of cutters employed in Local 23-25 ILGWU shops.

WHEREFORE, defendant Amalgamated Ladies' Garment Cutters'

Union, Local 10 of ILGWU respectfully prays for judgment dismissing the Complaint herein together with the costs and disbursements of this action.

Dated: August 12, 1976

EMIL SCHLESINGER
c/o Local 10, ILGWU
218 West 40th Street
New York, New York 10018
(212) OX 5-0850

TO:

BURTON H. HALL, Esq.
Attorney for Plaintiffs
401 Broadway
New York, New York 10013

MAX ZIMNY, Esq.
Attorney for Defendant
International Ladies' Garment
Workers' Union, AFL-CIO
1710 Broadway
New York, New York 10019

JA 22

AMALGAMATED LADIES' GARMENT CUTTERS' UNION

218 WEST 40th STREET NEW YORK, N.Y. 10018 • AREA CODE 212 695-0850

ASE DOLGEN
Manager-Sec'y

WILLIAM WEISS
Assistant Manager

NAT KLEIN
Sec'y-Executive Board

February 10, 1975

Mr. Nat Klein
Secretary - Executive Board
Amalgamated Ladies' Garment Cutters Union-Local 10
I.L.G.W.U.
218 West 40th Street
New York, N.Y. 10018

Dear Sir and Brother:

I, a member of Local 10, I.L.G.W.U., hereby prefer charges against OVIDIO VEGA LEDGER #17937, TOMAS ROSARIO LEDGER #26288 and RAYMOND CABEL LEDGER #25777, for violations of the following provisions of the I.L.G.W.U. Constitution and By-laws, pursuant to a pre-determined and calculated plan by:

1. Interfering with the functions and powers of officers, business agents, representatives, employees and agents of Local 10, I.L.G.W.U., in violation of subdivision (E) of Section 1, Article 20 of the constitution.

2. Interfering with the functions and powers of Local 10, I.L.G.W.U., in violation of subdivision (F) of Section I, Article 20 of the constitution.

3. Disobeying and failing to comply with orders and decisions of officials of Local 10, I.L.G.W.U., in violation of subdivision (C) of Section I, Article 20 of the constitution.

4. Action and conduct detrimental to the interests of the I.L.G.W.U., and of Local 10, in violation of subdivision (I) of Section I, Article 20 of the constitution: and

5. Action and conduct unbecoming a member, occuring in connection with membership in the I.L.G.W.U. and employment in its jurisdiction, in violation of subdivision (L) of Section I, Article 20 of the Constitution.

EXHIBIT A-1

JA 23

AMALGAMATED LADIES' GARMENT CUTTERS' UNION

218 WEST 40th STREET NEW YORK, N.Y. 10018 • AREA CODE 212 695-0850

ABE DOLGEN
Manager-Sec'y

WILLIAM WEISS
Assistant Manager

NAT KLEIN
Sec'y-Executive Board

In that on January 29, 1975 each in conjunction with each other, jointly took possession of the office of the Manager of Local 10, obstructed and interfered with the conduct of the usual business of Local 10, interfered with the functioning of the business agents and officers of Local 10, and refused to leave said office when ordered to do so by officers of Local 10.

And further, in that Raymond Cabal subsequently left the office of the Manager, proceeded on to the waiting room in the premises of Local 10, and sought to provoke physical action against the elected administration of Local 10, by members of Local 10 who were in such waiting room.

ABE DOLGEN

218 West 40th Street
ADDRESS

12352
LEDGER #

EXHIBIT A-1

UA 4-24

AMALGAMATED LADIES' GARMENT CUTTERS' UNION

218 WEST 40th STREET NEW YORK, N.Y. 10018 • AREA CODE 212 695-0850

ABE DOLGEN
Manager-Sec'y

WILLIAM WEISS
Assistant Manager

NAT KLEIN
Sec'y-Executive Board

May 8, 1975

Mr. Nat Klein
Secretary - Executive Board
Amalgamated Ladies' Garment Cutters Union-Local 10
I.L.G.W.U.
218 West 40th Street
New York, N.Y. 10018

Dear Sir and Brother:

I, a member of Local 10, I.L.G.W.U., hereby prefer charges against OVIDIO VEGA IEDGER #17937, TOMAS ROSARIO IEDGER #26288 and RAYMOND CABEL IEDGER #25777, for violations of the following provisions of the I.L.G.W.U. Constitution and By-Laws, pursuant to a pre-determined and calculated plan by:

1. Interfering with the functions and powers of officers, business agents, representatives, employees and agents of Local 10, I.L.G.W.U., in violation of subdivision (E) of Section 1, Article 20 of the constitution.

2. Interfering with the functions and powers of Local 10, I.L.G.W.U., in violation of subdivision (F) of Section I, Article 20 of the constitution.

3. Disobeying and failing to comply with orders and decisions of officials of Local 10, I.L.G.W.U., in violation of subdivision (C) of Section I, Article 20 of the constitution.

4. Action and conduct detrimental to the interests of the I.L.G.W.U., and of Local 10, in violation of subdivision (I) of Section I, Article 20 of the constitution: and

5. Action and conduct unbecoming a member, occuring in connection with membership in the I.L.G.W.U. and employment in its jurisdiction, in violation of subdivision (L) of Section I, Article 20 of the Constitution.

EXHIBIT A-2

AMALGAMATED LADIES' GARMENT CUTTERS' UNION

218 WEST 40th STREET NEW YORK, N.Y. 10018 • AREA CODE 212 695-0850

ABE DOLGEN
Manager-Sec'y

WILLIAM WEISS
Assistant Manager

NAT KLEIN
Sec'y-Executive Board

JA 25

In that on January 29, 1975 each in conjunction with each other, jointly took possession of the office of the Manager of Local 10, obstructed and interfered with the conduct of the usual business of Local 10, interfered with the functioning of the business agents and officers of Local 10, and refused to leave said office when ordered to do so by officers of Local 10.

And further, in that Raymond Cabel subsequently left the office of the Manager, proceeded on to the waiting room in the premises of Local 10, and sought to provoke physical action against the elected administration of Local 10, by members of Local 10 who were in such waiting room.

ABE DOLGEN

218 West 40th Street

ADDRESS

12352

LEDGER #

EXHIBIT A-2

ILGWU

JA 26

SOL C. CHAIKIN
WILBUR DANIELS
E. HOWARD MOLISANI
DAVID DUBINSKY
LOUIS STULBERG
GENERAL EXECUTIVE BOARD
SHELLEY APPLETON
MORRIS BIALIS
NICHOLAS S. BONANNO
ISRAEL BRESLOW
SIMON BRESNER
ABE DOLGEN
DAVID GINGOLD
SOL GREENE
MURRAY GROSS
SOL HOFFMAN
MATTIE JACKSON
SAM JANIS
EDWARD KRAMER
DOUGLAS LEVIN
HENOCH MENDELSUND
SALVATORE NOTO
JULIUS RAMIREZ
WILLIAM ROSS
EDWARD SCHNEIDER
MATTHEW SCHOENWALD
FREDERICK SIEMS
CORNELIUS WALL

October 15, 1975

TO: Ovidio Vega, 373 E. 188th St., Bronx, N.Y. 10058
Raymond Cabel, 2190 Brigham St., Bklyn, N.Y. 11229
Tomas Rosario, 1295 Spofford Ave., Bronx, N.Y. 10474, (Apt. 18)
Abe Dolgen, Local 10, ILGWU, 218 W. 40th St., New York, N.Y. 10018
Nat Klein, Secy., Executive Board, Local 10, ILGWU, 218 W. 40th St., New York, N.Y. 10018

Dear Sir and Brother:

Enclosed please find Decision of the General Executive Board I.L.G.W.U., rendered October 8, 1975, in the matter of the charges preferred by Abe Dolgen against Ovidio Vega, Raymond Cabel and Tomas Rosario.

Fraternally yours,

JAMES LIPSIG
Assistant Executive Secretary

jl/hw

EXHIBIT B

ILGWU

JA 27

SOL C. CHAIKIN
PRESIDENT
GENERAL SECRETARY-TREASURER

WILBUR DANIELS
EXECUTIVE VICE-PRESIDENT

E. HOWARD MOLISANI
FIRST VICE PRESIDENT

DAVID DUBINSKY
LOUIS STULBERG
HONORARY PRESIDENTS

GENERAL EXECUTIVE BOARD
SHELLEY APPLETON
MORRIS BIALIS
NICHOLAS S. BONANNO
ISRAEL BRESLOV
SIMON BRESNER
ABE DOLGEN
DAVID GINGOLD
SOL GREENE
MURRAY GROSS
SOL HOFFMAN
MATTIE JACKSON
SAM JANIS
EDWARD KRAMER
DOUGLAS LEVIN
HENOCH MENDELSUND
SALVATORE NOTO
JULIUS RAMIREZ
WILLIAM ROSS
EDWARD SCHNEIDER
MATTHEW SCHOENWALD
FREDERICK SIEMS
CORNELIUS VALL

Decision of General Executive Board, ILGWU, on Charges by Abe Dolgen against Tomas Rosario, Ovidio Vega and Raymond Cabel

Although the three accused members of Local 10 have failed to utilize their right under the ILGWU Constitution to appeal to the full General Executive Board of the ILGWU (GEB), from the attached decision of its Appeal Committee, the GEB, on its own motion, has reviewed that decision, pursuant to its authority under Article 23, Section 5, subd.(d), of said Constitution.

It is the decision of the GEB that because of the special circumstances surrounding the case, and the fact that the charges have already been heard twice by the Executive Board of Local 10, the charges shall be reheard de novo by a Trial Committee of Local 10, under the following conditions:

1) The Trial Committee shall be composed of rank-and-file members of Local 10 and shall consist of five (5) members and two (2) alternates selected by the membership of Local 10 at the next general membership meeting of the Local. Persons serving on the Trial Committee shall not have previously been involved in hearing the charges or in making the charges or in defending against them.

2) The Trial Committee shall select one of its members as Chairman. It shall also select a Secretary from among its members who shall prepare the official minutes of the hearing which shall be filed in the offices of Local 10. The official minutes or true copies thereof shall be made available for inspection in the offices of Local 10 by either the charging party or the accused upon their written request therefor. True copies of the minutes shall be furnished if so requested in writing.

3) Should the Trial Committee find the accused or any of them guilty, any penalty which might be imposed shall not include disqualification as a candidate for Union office.

EXHIBIT B

EXHIBIT C

JA - 28

on of the Local 10 Trial Committee

e undersigned were elected at a membership
f Local 10 on Nov 24, 1975, as a trial
to hear and decide "De Novo" charges
Feb 10, 1975 and repeated on May 8, 1975, by
be Dolgen against Brothers Tomas Rosario,
ya and Raymond Cable because of their
on Jan 29, 1975, claimed to be in violation of
tutions of the I.L.G.W.U. A copy of the
nd a copy of the decision of the General
Board of the I.L.G.W.U. dated Oct 8, 1975,
ered to us by Brother Nat Klein, Secretary
Board of Local 10.

tice of the hearing was sent to the accuser and
sed to appear for trial on Dec 18, 1975, with
nesses. When the hearing opened, the
read the decision of the General Executive
the I.L.G.W.U. which set the ground
the hearing. It was observed that the
had brought with them to the hearing room
ding device which they had set in motion.
rman, after conferring with members of the
mmittee and receiving their unanimous
t, ruled that the recording device was out of
the trial room and ordered the tape recorder
moved. The accused refused to remove it, the
mmittee decided and the Chairman advised the
that the hearing would not continue with
ding device in the hearing room and
d the hearing for three weeks, for the purpose
the accused an opportunity to decide whether
told appear without a tape recorder. The accused
vised that if they persisted in bringing a
order to the hearing on the adjourned date,
ring would be held without them.

e adjourned hearing was set for Jan 8, 1976, and
as given to the accuser and the accused to appear
s witnesses on that day. In the meantime, on

Dec 22, 1975, Brother Rosario sent a letter to the Chairman of the Committee to which he attached a "Statement to the trial Committee to try us on Dolgens charges" dated Dec 18, 1975, signed by all three accused; a letter dated Dec 22, 1975, sent to Brother Nat Klein, Secretary-Executive, signed by all three accused, requesting certain information; and a letter sent to Brother James Lifrieg, Assistant Executive Secretary, signed by all three accused, requesting certain information. Also, on Dec 26, 1975, the Secretary of the trial Committee sent letters to the accuser and the accused in which he advised them of the date, time and place of the adjourned hearing and in which he stated that "the decision reached by the trial committee on Dec 18, 1975, was that you may not bring or use a tape recorder or any other electronic recording device at the hearing on Jan 8, 1976, or, if the trial is continued on any subsequent date. You are required to obey that ruling". These letters and the statement together with the Chairmans reply were made part of the minutes of the hearing of Jan 8, 1976.

When the hearing began the evening of Jan 8, 1976 it was noted by the Chairman that the accused again brought into the hearing room a recording device and that they had been told at the hearing of Dec 18, 1975, that if they insisted on having a recording device in the room, the hearing would be held without them. They again refused to remove the recording device and the trial Committee adjourned to another room in the local 10 offices to hear the charges without the accused being present

On the basis of the evidence before us in the trial which we held, including the statement signed by the three accused, dated Dec 18, 1975, we unanimously sustain Brother Dolgen's charge that Brothers Rosario Vega and Cabal on Jan 29, 1975, staged a sit-down in the office of the Manager of Local 10, that after stating their

business with him, they refused to leave his office upon repeatedly being requested to do so and that they obstructed Local 10 and interfered with it in the performance of its duties and functions. We unanimously find that Brother Dolgen had to call the police to remove the three accused Brothers from his office, that it was only then that Brother Cabel left the office and went into the outside waiting room where many cutters were present and made statements against the officers of Local 10. Brothers Rosario and Vega continued to remain in the office of the Manager until they were removed by the police. We unanimously find that Brother Dolgen did not order their arrests and that he did not sign any complaint in any court against them.

We unanimously decide that Brothers Rosario and Vega are suspended from the right to and are barred from attending and participating in any and all Membership Meetings of Local 10 for a period of 12 months from Jan. 8, 1976, and that Brother Cabel, who left the manager's office earlier than the others when the police were called, is suspended from the right to and is barred from attending and participating in any and all Membership Meetings of Local 10 for a period of 12 months from Jan. 8, 1976; that in all other respects, Brothers Rosario, Vega and Cabel shall have full rights of membership and shall not be disqualified from being a candidate for any office in Local 10 or in the ILGWU.

We unanimously do not sustain the additional charge of Brother Dolgen against Brother Cabel, that in the waiting room he "sought to provoke physical action against the elected administration of Local 10 by members of Local 10 who were in such waiting room". Although he behaved disorderly and his language against the officers of Local 10 was obscene and unbecoming to a

member of Local 10, the evidence does not establish provocation to physical action.

Jan 29, 1976

David Mittleman
CHAIRMAN – TRIAL COMMITTEE

Harold J. Brodsky
SECRETARY - TRIAL COMMITTEE

Murray Edwin
MEMBER - TRIAL COMMITTEE

Saul P. Boccaccini
MEMBER – TRIAL COMMITTEE

David Sirota
ALTERNATE MEMBER - TRIAL COMMITTEE

(1)

JA 32

Minutes of the Trial Committee - Jan 9, 1976

The Trial Committee consisting of the following —
David Mittleman - Chairman
Harold Brodsky - Secretary
Murray Elbom
Sam Boccasini
Dave Sirota - alternate
met this date at 6:30 P.M. at Local 10 office, 218 W 40th St, N.Y.C. for the purpose of coming to a decision concerning the charges preferred by Brother Abe Dolgen, a member of Local 10, against the following members of Local 10. —

Orlando Vega 17937
Tomas Rosario 26288
Raymond Cabel 25777

Brother Flemmie Adams had not been present at the hearing of Jan 28, 1975, at which time the evidence was heard; was excused, Brother Jerry Siedband, alternate, was excused.

The Secretary stated that he and Chairman Mittleman prepared a draft of a decision in the case, copies of which had been photostated and distributed to the four members and one alternate who had been present at both meetings of the Trial Committee. Chairman Mittleman then read aloud the draft of the decision. There was general discussion with respect to the first charge, in which all the members of the Trial Committee participated. Brother Boccasini made a motion which was seconded by Brother Sirota that the draft decision be adopted with respect to the first charge that Brothers Rosario and Vega are suspended from the right to and are barred from attending and participating in any and all Membership Meetings of Local 10 for a period of 18 months from Jan 9, 1976. A vote was taken on the motion was unanimously passed.

Brother Boccasini made a motion which was seconded by Brother Sirota that the draft decision be adopted with respect to the first charge that Brother Cabel is suspended from and the right to and is barred from attending and participating in any and all Membership Meetings of Local 10 for a period of 12 months from Jan 8, 1976. A vote was taken and the motion was passed by a vote of 4 to 1. In the discussion the dissenter stated that he believed Brother Cabel was guilty but that he thought he should be warned not to commit the same or similar act again, and if he did, he should then be suspended.

With respect to the second charge against Brother Cabel, that he "sought to provoke physical action against the elected administration of local by members of Local 10 who were in such waiting room", Brother Sirota made a motion which was seconded by Brother Boccasini that the charge not be sustained. a vote was taken and this motion was unanimously passed.

Upon motion duly made and seconded, the draft decision as prepared by Chairman Mittleman and Secretary Brodsky was adopted as the decision of the Trial Committee.

Respectfully submitted

Harold Brodsky
Secretary - Trial Committee

Exhibit 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JA 34

TOMAS ROSARIO, OVIDIO VEGA and RAY CABEL, Plaintiffs, -against- AMALGAMATED LADIES' GARMENT CUTTERS' UNION, LOCAL 10 of I.L.G.W.U. and INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO, Defendants	:	76 Civ. 3204 (CBM) ANSWER OF INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO

Defendant, International Ladies' Garment Workers' Union, AFL-CIO (hereafter "ILGWU"), answering the complaint herein, by Max Zimny, its attorney, respectfully alleges:

FIRST DEFENSE

FIRST: Admits the allegations contained in paragraphs 2 and 7 of the complaint.

SECOND: Denies knowledge or information sufficient to form a belief as to the allegations of paragraphs 8, 9, 10, 11, 12, and 21 of the complaint.

THIRD: Upon information and belief, denies the allegation of paragraphs 14, 16, 17, 18, 19, 22, and 23 of the complaint.

FOURTH: Denies the allegations of paragraphs 25 and 26 of the complaint.

FIFTH: With respect to paragraph 1 of the complaint, admits that plaintiffs allegedly bring this action under Title 1 of the LMRDA; but except as herein expressly admitted, denies each and every allegation of said paragraph 1.

SIXTH: With respect to paragraph 3 of the complaint, admits that ILGWU is an unincorporated international labor organization of more than 10 members with its principal office at 1710 Broadway, New York, New York, engaged in an industry affecting commerce within the meaning of the LMRDA and that autonomous subordinate

labor organizations, such as defendant Local 10, are affiliated with it; but except as herein expressly admitted, denies each and every allegation of said paragraph 3.

SEVENTH: With respect to paragraph 4 of the complaint, admits that there is pending in this Court an action entitled "Tomas Rosario, Ovidio Vega and Ray Cabel against Abe Dolgen individually and as Manager of Amalgamated Ladies' Garment Cutters' Union, Local 10, International Ladies' Garment Workers' [illegible] AFL-CIO, and the City of New York," No. 75 Civ. 4632 (CBM); but except as expressly admitted, denies each and every allegation of said paragraph 4.

EIGHTH: With respect to paragraph 5 of the complaint, admits that on October 8, 1975, the General Executive Board of ILGWU decided that the charges against plaintiffs by member Abe Dolgen should be reheard de novo by a trial committee of defendant Local 10 for the reasons set forth in its decision and under certain express conditions also set forth therein. A copy of said decision is attached hereto as Exhibit "A" and the Court is respectfully referred thereto for a full and accurate rendition thereof; but except as expressly admitted, denies each and every allegation of said paragraph 5.

NINTH: With respect to paragraph 6 of the complaint the allegations thereof are the subject matter of the action pending in this Court as more fully described in paragraph THIRD above. The Court is respectfully referred thereto for an accurate rendition of the facts which occurred prior to matter complained of in this action.

TENTH: With respect to paragraph 13 of the complaint, upon information and belief, admits that on December 18, 1975, plaintiffs appeared before the trial committee of defendant Local 10 with a tape recorder and that they were denied the use thereof; but except as herein expressly admitted, upon information and belief, denies each and every allegation of said paragraph 13.

ELEVENTH: With respect to paragraph 15 of the complaint, upon information and belief, admits that on January 8, 1976, plaintiffs appeared before the trial committee of Local 10 with a tape recorder and that they were denied the use thereof;

but except as herein expressly admitted, upon information and belief, denies each and every allegation of said paragraph 15.

TWELFTH: With respect to paragraph 20 of the complaint, upon information and belief, admits that on January 29, 1976, the trial committee of defendant Local 10 decided to suspend plaintiffs Rosario and Vega from the right to attend regular membership meetings of Local 10 for a period of 18 months from January 8, 1976, and suspended plaintiff Cabel from the right to attend regular membership meetings of Local 10 for a period of 12 months from January 8, 1976; but except as herein admitted, upon information and belief, denies the allegation of said paragraph 20.

THIRTEENTH: With respect to paragraph 24 of the complaint, upon information and belief, admits that defendant Local 10 will continue to enforce the aforementioned discipline of plaintiffs unless otherwise ordered by this Court; but except as expressly admitted, denies the allegations of said paragraph 24.

SECOND DEFENSE

FOURTEENTH: The complaint fails to state a claim upon which relief may be granted.

THIRD DEFENSE

FIFTEENTH: The Court lacks jurisdiction over the subject matter of this action.

FOURTH DEFENSE

SIXTEENTH: Before instituting this action, plaintiffs failed to exhaust, within a four-month period, the reasonable appellate procedures provided under Article 23 of the ILGWU constitution. A copy of said constitution is attached hereto as Exhibit "B."

FIFTH DEFENSE

SEVENTEENTH: The actions complained of require that charges be filed against the General Executive Board of ILGWU and that such charges be heard in

accordance with Article 21, Section 12 of the ILGWU constitution. Plaintiffs have failed to follow said procedures.

EIGHTEENTH: Accordingly, plaintiffs have completely failed to exhaust reasonable hearing procedures before instituting this action.

SIXTH DEFENSE

NINETEENTH: The acts complained of were committed in the course of a labor dispute as defined in the Norris-LaGuardia Act, 29 U.S.C.A. Section 101 et seq.

TWENTIETH: As required by said Act, plaintiffs have failed to allege that officers or agents of ILGWU committed the acts complained of and that ILGWU actually authorized or actually ratified the acts complained of after actual knowledge thereof.

SEVENTH DEFENSE

TWENTY-FIRST: As required by law, plaintiffs have failed to allege that each and every member of ILGWU authorized or ratified the acts complained of.

WHEREFORE, defendant International Ladies' Garment Workers' Union, AFL-CIO, respectfully prays for judgment dismissing the complaint herein, together with costs and disbursements of this action.

Dated: August 17, 1976.

Max Zimny

MAX ZIMNY
1710 Broadway
New York, New York 10019
(212) 265-7000

TO:

BURTON H. HALL, ESQ.
Attorney for Plaintiffs
401 Broadway
New York, New York 10013

EMIL SCHLESINGER, ESQ.
Attorney for Defendant Local 10
c/o Local 10, ILGWU
218 West 40th Street
New York, New York 10018

Exhibit 7

cmsr

JA 38

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

TOMAS ROSARIO, OVIDIO VEGA and RAY CABEL,

Plaintiffs,

- v s -

76 Civ. 3204

AMALGAMATED LADIES GARMENT CUTTERS UNION, LOCAL 10 of ILGWU and INTERNATIONAL LADIES GARMENT WORKERS UNION,

Defendants.

----------x

B e f o r e :

HON. CONSTANCE BAKER MOTLEY,

District Judge.

New York, New York
September 8, 1976 - 2:15 p.m.

A p p e a r a n c e s :

BURTON HALL, ESQ.,
For the Plaintiffs.

EMIL SCHLESINGER, ESQ.,
For Defendant ALGCU.

MAX ZIMNY, ESQ.,
For Defendant ILGWU.

[Case called.]

THE CLERK: Plaintiff ready?

MR. HALL: Plaintiff is ready.

THE CLERK. Defendants ready?

MR. ZIMNY: Yes.

MR. HALL: Your HOnor, I am not certain whether your Honor intended an evidentiary hearing or not. I have my client with me. I am prepared for an evidentiary hearing but since we are going to argue the matter --

THE COURT: You have a motion for preliminary injunction. I believe the defendants have a cross-motion for summary judgment, is that it?

MR. HALL: That's right, your Honor.

MR. SCHLESINGER: There are two motions, your Honor.

THE COURT: All right. We will hear the plaintiff's motion and then we will hear the defendant's motion.

MR. HALL: The plaintiffs are union members who were brought up on charges more than a year ago, year and a half ago, by the manager of of the local union on a claim that they had obstructed his office. They have been subjected now to three trials, two of which the union has declared were invalid. We are concerned here with the

third trial which was held in January of this year.

The plaintiffs appeared for that trial, they came, they sought to make a record of the hearing proceedings by either bringing a stenographer with them or a tape recorder, but since the union objected to both, they brought a tape recorder. The trial committee got up, the chairman announcing we will hold the trial without you. The committee walked off to another room, closed the door and we say locked it, apparently held the trial in there, and three weeks later announced that they found the plaintiffs guilty and suspended them from attending meetings, the two of them for a period of eighteen months --

THE COURT: Did the plaintiffs testify at that hearing?

MR. HALL: No, they weren't allowed there. Neither was their lay counsel, that is, they came under the union constitution with two fellow union members to represent them as counsel and these two fellow union members were also barred.

THE COURT: Is there a transcript of what occurred at that hearing?

MR. HALL: The union has official minutes of what happened behind the doors. We, of course, don't

know what happened behind the doors. We do have a transcript of what happened --

THE COURT: Who was present in that room?

MR. HALL: Apparently the trial committee, the charging party, that is the manager of the union, and its various witnesses.

THE COURT: Were there any witnesses for the plaintiffs there?

MR. HALL: No. The plaintiffs nor anybody on their side was allowed in the room.

THE COURT: They were not called to testify?

MR. HALL: No. The plaintiffs and their lay counsel stood outside the room. They stood by where the trial had been scheduled to be held and waited, and after awhile the trial committee came out, put their coats on and walked home saying nothing to the plaintiffs.

Obviously the plaintiffs were denied their rights to cross-examine, their rights to confront, their rights to present evidence on their own behalf and so on. We contend here that the right to actually make a record of the proceedings is protected and that is essential as well because when a union member has been brought up on charges he comes before the officialdom or whoever represents the officialdom at the trial

committee he is essentially going into a room filled with his enemies and if he can't make some kind of a record for his own defense he's at their mercy.

As to the notes that will be taken, the official record that will be taken. As to whether or not he is going to be taken down as having committed an offense or committed an offense in the area.

THE COURT: And what relief do you seek at this time?

MR. HALL: I seek an injunction to put aside the punishment but primarily to protect the rights of the three plaintiffs to attend union meetings.

THE COURT: When did this hearing take place?

MR HALL: On January 9th of -- January 8th of 1976. The punishment was apparently handed down January 29th, they received it early in February.

They promptly appealed, they pursued their appeals without success.

THE COURT: Their punishment was affirmed on appeal?

MR. HALL: There has been no decision on appeal but it has been in effect.

THE COURT: There has been no decision since February on appeal?

MR. HALL: That's right. The punishment is --

THE COURT: What is the appeal based on? Is there a record?

MR. HALL: They submitted a written appeal, they then went to an appeal hearing, but the appeal hearing was arbitrarily stopped by the appeal committee on the ground that they said that they refused to proceed because there was a tape recorder present.

THE COURT: There was a tape recorder?

MR. HALL: There was a tape recorder present. The plaintiffs insisted -- repeatedly said that they were ready to proceed with the hearing, they had written several times stating their readiness to proceed with the hearing but nothing has happened.

However, the punishment did go into effect immediately. Under the provisions of the union constitution it is pending appeal. So they have been barred, this punishment has been in effect since --

THE COURT: What is the punishment?

MR. HALL: They are barred from coming to any and all union membership meetings for periods of eighteen months and twelve months. The plaintiffs Rosario and Vega are excluded for eighteen months beginning January 8th, I believe, and the plaintiff Cabel is excluded for

twelve months.

THE COURT: And you want a preliminary injunctio enjoining -- this punishment pending the outcome of the trial?

MR. HALL: That's right,your Honor.

THE COURT: All right. I will hear from the defendants.

MR. SCHLESINGER: Your Honor, I rise in opposition to the plaintiffs' motion for preliminary injunction in support of the defendants' motion for summary judgment. The papers are voluminous, your Honor, but only because in a motion for summary judgment we wanted to submit the documentary evidence to prove every allegation, and the bulk of the papers consist of the exhibits, most of which are signed by the plaintiff himself.

Now, it is not going to be helpful to this Court or aid it in its decision making process for facts to be given to it which are convoluted and distorted. It will not aid this Court in arriving at a decision in listening to generalities, brash statements unsupported by facts, fantasy, fiction instead of facts. It will not help the Court to arrive at a decision when the plaintiffs allege in their complaint that the manner

in which the trial committee was elected by open hand was in a manner that they were hand-picked by the manager of Local 10 and others allied with him, and the next paragraph, that each of them was and is allied with the incumbent officials of Local 10 and biased against each of the plaintiffs because of plaintiff's opposition to the officers.

And there is not a single word in any of the affidavits to support any single one of these statements. It will not help this Court to arrive at a decision making process, or help the Court in this argument to inject into this proceeding the two prior disciplinary proceedings which are the subject of another action pending before this Court in which a motion was made to dismiss the complaint upon which a decision is still being awaited.

It will not be helpful to this Court for the plaintiffs in their brief to state that they now have a tape recording of what happened in the first disciplinary proceeding when they admitted all along at that time that they did not tape record the proceedings and participated in the proceedings without it. And now they lie and say that they did have a transcript and did make a transcript, a tape recording of that hearing.

And in the brief counsel states that the official notes were wildly inaccurate, and I quote him, that

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they were falsifications of the original minutes. That testimony never given was recorded, et cetera, I quote; and there is not a single word in any of the affidavits to substantiate any one of these statements. Indeed, what it does establish is the credibility of the affidavits submitted by the plaintiffs.

It will not help the Court, or aid it, in arriving at a decision when Mr. Hall in his brief cites on Page 4 of his main brief a decision of the first trial committee in the Hart case upon which he relies, and leaves out the most critical paragraph of it. And when I called it to his attention he sends a letter to your Honor that there should have been asterisks after the sentence, and never gave your Honor the critical sentence that I shall talk to you about in a few moments.

It will not help your Honor in arriving at a decision in this case in continuing as Mr. Hall does in relying upon the Kiepura case for the proposition that they were entitled to have a stenographer present at the meeting, when as a matter of fact the documentary evidence signed by the plaintiffs shows they never asked for a stenographer. And the case on which he relies expressly held, as he must know, and I quote:

"We do not hold that the use of a court

reporter", which is not what they say that it was, "is a necessary element of a full and fair hearing." But they did allow it in that case because of the peculiar circumstances in that case, because they were reconstructing a hearing that had taken place four years ago. And the Court held that where they were ready to have an official court reporter for which they were willing to pay, it should have been granted.

That is not this case.

THE COURT: Well, I believe that Mr. Hall mentioned that there was no court reporter there and there was no tape recording, and that even the plaintiffs themselves were not present and did not --

MR. SCHLESINGER: Well, I want to come to that. I don't think he said that.

MR. HALL: If I could interject. The plaintiffs did bring a tape recorder to the portion they were allowed for --

THE COURT: I said the hearing itself.

MR. HALL: Yes, that's right, your Honor.

THE COURT: Let me ask you this, Mr. Schlesinger. Was there a transcript of this hearing?

MR. SCHLESINGER: There was a transcript of this hearing, yes. And there was -- it wasnt sent to the

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defendants, it was sent to the plaintiffs.

THE COURT: Do you have a copy of it?

MR. SCHLESINGER: Yes.

THE COURT: All right. Do you want to hand it up?

MR. SCHLESINGER: Well, it is attached to the papers. I will give it to you in the --

THE COURT: Well, if it is attached, no, don't hand it up.

MR. SCHLESINGER: Not only has all of it --

THE COURT: Is it attached to your motion?

MR. SCHLESINGER: It is attached to my motion, your Honor.

THE COURT: What exhibit number is it?

MR. SCHLESINGER: I will tell you what the exhibit number is. It is attached to the affidavit of Brodsky which you will find as exhibit -- may I step up to the Court and show it to you?

THE COURT: No, just give me the exhibit number, please.

MR. SCHLESINGER: It is Exhibit E, attached to the affidavit of Brodsky. It is toward the end of the papers. About 20 per cent away from the end.

THE CLERK: Is this the responsive affidavit

or --

MR. SCHLESINGER: No, it is just the -- there are two exhibits, your Honor, A and B. It will be so much easier for you to see it without wasting the time of the Court.

THE COURT: We have the original here.

MR. SCHLESINGER: This was the minutes of the meeting of December 18, the first meeting. And this was mailed to them. And this is the Exhibit C which is the minutes of the second hearing which was mailed to them. And it contains all of the testimony including a statement which the defendants gave in defense --

THE COURT: All right.

MR. SCHLESINGER: I want you to read first Exhibit B, the one before that first. Because that is critical to this case, your Honor. Your Honor --

THE COURT: I am looking at the minutes.

MR. SCHLESINGER: Look at December 18th first, your Honor.

THE COURT: All right, I notice that on the minutes, and it does appear that the plaintiffs appeared at the hearing on December 18th and subsequently on January 8th with a tape recording. They were not permitted to have the tape recording.

MR. SCHLESINGER: Right. I would also call

to your attention, your Honor, that on December 22, 1975, that is between the December 18th hearing and the January 8th hearing Rosario, who is sitting here in this room, sent a letter in which he enclosed a statement to the third trial committee to try us on charges which contains two pages, which is Exhibit 4-B at the middle of the affidavit and in substance or in part denies the charges. And that is considered and is part of the minutes and it was considered the same as what -- what they did was they took the written statements of all parties, and I want to say with respect to the trial committee while there were two charges, one against the three defendants for staging a sit-down and not permitting the manager of the union and the local attendant to service its members at the performance and collective bargaining contractual obligations, there was a second charge aimed specifically against Cabel for provoking violence on the outside against officers of the union.

And the trial committee on the basis of what they had before them did not sustain the second charge which is different from what had happened in the previous trial. Now, what we start here with --

THE COURT: Well, let me ask you about the tape recording.

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MR. SCHLESINGER: I want to come to that, your Honor.

THE COURT: Is there a reason why a tape recorder is not permitted?

MR. SCHLESINGER: Yes, there is, your Honor. We start here with the -- first of all, the plaintiffs knew all along that no tape recorders would be permitted.

THE COURT: How did they know that?

MR. SCHLESINGER: Because they had been in the prior disciplinary proceedings been told. They took appeals to the International. Mr. Spitzer, one of the counsel for them, was involved in an action and it was ruled and the International - the GEB interpreted the constitution as it had the right to do under the constitution as saying that no tape recorders are allowed.

THE COURT: Who is Mr. Spitzer?

MR. SCHLESINGER: Mr. Spitzer is the lay counsel that represented the three plaintiffs at the hearings. At all three hearings. And he himself was involved in the complaint and which Mr. Rosario -- at which Mr. Rosario testified and I believe Mr. Cabel testified, and they knew that there was a decision against it and that the EBI of the International, which has a right to interpret the constitution between conventions,

made a determination that there cannot be any tape recorders.

Some unions do have provisions in the constitution providing for stenographers. I don't know of any union that provides for tape recorders. They wouldn't permit a tape recorder because it could be manipulated because erasures can be made. Because they could record by pushing a button only for that part of the evidence which was favorable to them and leaving out the balance. They could take the entire tape recorder and put it on another -- the tape and put it on another tape recorder and omit from it parts that were unfavorable to them.

THE COURT: Let me ask you this: If tape recorders are not permitted, is there a reporter in the room?

MR. SCHLESINGER: I want to tell you that under the decision of the General Executive Board issued on October 8, 1975 it granted a hearing de novo and knowing all about the tape recorders it ordered that only the secretary of the committee, of the trial committee, which was to be elected at a membership meeting of Local 10 would be the only one to record the official minutes of the meeting. That did not bar the plaintiffs from making their own notes, from taking their own minutes,

but no one was permitted to use a tape recorder. And the Committee interpreted and had a right to interpret that the decision of the General Executive Board meant that only the secretary could take the official minutes and there was to be no tape recorders. And tape recorders have never been allowed. Nor have stenographers been allowed.

And the constitution doesn't provide for it. And what the trial committee did was consistent with the constitution. And if they did not agree with it they should have participated in the hearing without the tape recorder and taken the matter up on appeal to the appeal committee. Your Honor, if --

THE COURT: Well if he is allowed to take his own minutes, don't you have the same problem as if he were allowed to take his tape recorder?

MR. SCHLESINGER: No, you don't, because minutes are taken in hand -- this is a way of doing it. In the Hart case, for example, let me show you what happened, in the Hart case which -- relied on by the plaintiffs -- the plaintiff brought a tape recorder. The constitution provided that only a competent stenographer should take the minutes. Instead of that, they had the secretary take the minutes and they put into effect a tape

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recorder and wouldn't allow the plaintiff to use a tape recorder, which was wrong.

Now, when the plaintiff walked out, he had a perfect right to walk out because he was entitled to do the same thing as the trial committee was doing. And we know what Watergate has meant with tape recorders.

And I tell your Honor it would be a very dangerous precedent, and there is no case on record that I could find --

THE COURT: Well, the plaintiff could make the same charge against the union that you are now making against him, that the minutes would be improperly recorded.

MR. SCHLESINGER: Well, let me tell you about that. They knew what the testimony was in the prior trials. They had appeared before the appeal committee. They were --

THE COURT: No, I am getting at how you determine whether the minutes have been accurately recorded.

MR. SCHLESINGER: Because the plaintiffs would have a right to come to the appeal committee and question the minutes and say, look, this is not what happened. And when they did come to the appeal committee

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in the prior trial and the minutes were pointed out to them and shown to them they didn't object to a single statement in those minutes and didn't say that anything in those statements was incorrect.

THE COURT: You mean at this very last hearing?

MR. SCHLESINGER: And at the other two hearings. They took an appeal. And they never pointed out an incorrect statement.

THE COURT: Well, why were the other two hearings sent back?

MR. SCHLESINGER: Well, the first one was sent back because a charge was made that the executive board of Local 10 which acts also as a grievance committee should have acted as a grievance committee without the other members of the -- other people who generally are present before the executive board. And they felt that in the interest of justice that was wrong. And they sent it back for a new hearing.

When the new hearing was held it was -- they were found guilty again and on appeal it was sustained. The general executive board reading it and relying upon what they said in their papers on appeal which they considered, that this would deprive them of the right to

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run for office, and said, now, look, let's have enough of this nonsense. Let's have enough of this business of talking about prejudice. We will hold an election by the membership of Local 10 and they will elect five members of a trial committee and two alternates and the secretary of the trial committee shall be the only one to take the official minutes of the meeting. And that's what happened.

Now, I submit to your Honor that these plaintiffs have made up their mind that no matter what, they will thwart a hearing on the charges against them because they are engaging in exactly --

THE COURT: Well, can I understand what this committee was made up of again? The very last committee.

MR. SCHLESINGER: The last committee was elected by the membership of Local 10 at a meeting held on November 24, 1975.

THE COURT: And is that the union or local --

MR. SCHLESINGER: That is Local 10.

THE COURT: That is the local charging these plaintiffs; is that right?

MR. SCHLESINGER: It wasn't the local that charged them. It wasn't the manager that charged them. It was an individual that charged them. And the charges

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show that. And as a matter of fact, in the former complaint in the prior action Mr. Hall alleges that it was Dolgen, an individual who --

THE COURT: Why is the union hearing it if he is charged as an individual?

MR. SCHLESINGER: Well, under the constitution they are required to. The constitution says that an individual has the right to file charges against another member Any individual member has a right to file charges against another individual member.

THE COURT: So this is a charge brought by Duligin?

MR. SCHLESINGER: Individually.

THE COURT: Against these plaintiffs which the union is hearing?

MR. SCHLESINGER: For staging a sit-down in his office and not permitting him to service the members of the union and perform collective bargaining operations --

THE COURT: And the hearing committee was appointed by the general membership?

MR. SCHLESINGER: They were elected. They were elected.

THE COURT: By the general membership?

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MR. SCHLESINGER: By the general membership. There were only seven candidates nominated and the membership ruled that the five receiving the highest votes shall constitute the committee and the two receiving the lowest votes shall constitute the alternates. Only two votes were cast against them of all those present at the meeting.

THE COURT: How many were present at the meeting?

MR. SCHLESINGER: About two hundred. Now, I am contending to your Honor that they are trying in every way to thwart a hearing on the charges preferred against them.

First they raise the question that the meeting was improperly called. Why, even before the meeting was held, Mr. Rosario came in with a prepared statement, typed statement signed by him, not knowing whether or not -- how many people would be there. It happened that November was a very slow month in the industry. All the Christmas business had been finished. Most of the members of the union live in Brooklyn, Queens, Staten Island, Bronx, New Jersey, Upper New York State. Very few come to the office.

It was a very cold day. They were through

working, those that were working, were through at four o'clock, they didn't want to hang around until seven o'clock. That is all in our affidavit.

And it is not denied by them that that was the cause of the unusually low attendance. Generally there are about four hundred at a meeting. But they were intent not to hold a hearing. So they started first with an objection that the meeting was improperly called. Cabel got up, plaintiff Cabel got up and was recognized. There was a microphone in front of him. And he started to argue about the prior disciplinary proceedings --

THE COURT: Well, let's get back to the refusal to have a tape recorder. You say that that is a ruling of the executive committee or some board?

MR. SCHLESINGER: I will pose a question to your Honor very simply, and I will put it to you. I say that there is no issue of fact in this case. It is a matter of law.

THE COURT: All right.

MR. SCHLESINGER: And I will pose to you the questions as I understand them to be.

THE COURT: Then the first question is whether they are entitled to a tape recorder, is that it?

MR. SCHLESINGER: That is the way I want to

put it to your Honor. I want to put these questions.

THE COURT: Now, the refusal to grant the right to have a tape recorder led to all these other complaints, that is the right of cross-examination having been denied, excluded from the hearing, is that it?

MR. SCHLESINGER: All they ask for, your Honor, is the right to have the minutes of the prior trial, the two prior disciplinary proceedings, in order to prepare a defense.

THE COURT: Was that given to them?

MR. SCHLESINGER: No, it was not. It was not given to them upon my advice. I took the position that since this was a trial -- a hearing de novo, everything else that happened was dead as a do-do, and they were in the position as though no trials had ever been held. They didn't know who the witnesses were going to be. I was afraid that if they were given the minutes they would be distributed by them, and then they would have the argument that the minutes were known and the trial committee was prejudiced. And I did not want that to happen.

I wanted it to be a clearcut situation so that they would start de novo as though no trial had ever taken place, as though no disciplinary proceedings had ever taken place.

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THE COURT: All right, what else do you not dispute here? What is the third claim?

MR. SCHLESINGER: They came into the meeting, your Honor, and they were -- with a tape recorder. It was objected to. The committee conferred. They said that they can't use the tape recorder. They stated their reasons for it in their affidavit. They persisted in using the tape recorder. The chairman, after consulting with the committee, advised them that the hearing would be adjourned for three weeks in order to give them an opportunity to determine whether or not they would comply with the ruling. And if they didn't comply with it, the hearing would be held in their absence.

They did nothing. They didn't come to the Court, although they were invited to do so and ask the Court for a ruling.

THE COURT: Let me ask you this: If they had come to the hearing, would they have had the opportunity to cross-examine these witnesses who testified against them?

MR. SCHLESINGER: Certainly. If they didn't have the tape recorder.

THE COURT: All right. And would they have been allowed to bring in their lay counsel?

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MR. SCHLESINGER: Certainly.

THE COURT: All right. So that everything hinges on the tape recorder then?

MR. SCHLESINGER: That's right.

THE COURT: So that they have the right to cross-examine, is that it?

MR. SCHLESINGER: I say they would have had -- I say that they have taken advantage of their own wrong.

THE COURT: No, no. I am asking the questions now. You agree that they have the right to cross-examine the witnesses against them at a hearing, is that it?

MR. SCHLESINGER: I agree that they have that right, if they abide by the rules.

THE COURT: About a tape recorder.

MR. SCHLESINGER: Tape recorder. Without a tape recorder.

THE COURT: Now, you agree that they have a right to lay counsel at the hearing?

MR. SCHLESINGER: Yes, ma'am.

THE COURT: All right. And you deny that they have the right to prior minutes, is that it?

MR. SCHLESINGER: I deny they have the right to prior minutes.

THE COURT: Now that we have got the facts,

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I will give Mr. Hall an opporunity to --

MR. SCHLESINGER: Let me make a couple more statements, if your Honor pleases. The trial committee never denied them, by the way, prior minutes. And the trial committee wrote back and said, we are in no position to decide whether your are entitled to them or not until we hear the arguments and we will hear the arguments if you don't bring a tape recorder. So they never denied it. Is that clear? Now, I want to say --

THE COURT: Is there another lawyer representing another defendant?

MR. SCHLESINGER: I represent the International. I want to make a few more points.

THE COURT: We have to cut this hearing off. I have other matters. I want to give Mr. Hall an opportunity to reply. Then I will hear from the other lawyer.

MR. SCHLESINGER: I would like to make one or two points, your Honor, and to complete the whole picture to your Honor.

I want to say to your Honor that the punishment that was invoked, the discipline that was invoked is really not a very serious discipline. Because they are entitled to come to all meetings to which they are invited by letter; they are even entitled to come to the executive

board meeting where all new matters are initiated. They are not deprived of that opportunity. All together they are undeprived of the opportunity of attending one meeting and will be deprived of the opportunity of attending on November 20th. The next two meetings will be elections for which there will be letters sent out to which they can come and participate and nominate themselves and participate in the elections.

And by that time the suspension of Cabel will be over, and it wasn't that serious. I want to make another argument to your Honor.

They argue that because of the expulsion -- we are dealing here with Section 101(5) of the Landman Griffith law. That provision says: "No member of any labor organization be be fined, suspended, expelled nor otherwise disciplined except for non-payment of dues by such organization or by an officer thereof unless such member has been, A, served with written specific charges," That they have got. They have had that from February 10, 1975. "B, given a reasonable time to prepare his defense." That they had. They had from February 10th of 1975 to December the 18th, 1975. That's over ten and a half months.

And "C", afforded a full and fair hearing". And that's been interpreted by the Courts to mean a full

and fair hearing."

And I wanted to pose to your Honor questions which I think are relevant to this --

THE COURT: I want to hear from Mr. Hall now because I have to end the hearing.

MR. SCHLESINGER: You may want to --

MR. ZIMNY: You may want to hear from me before he responds, your Honor.

THE COURT: Let him respond to Mr. Schlesinger and then you may speak and he will respond to you.

MR. HALL: I would like to respond to a number of false statements or erroneous statements.

First, it is not true that the general executive board has ever made a ruling as to whether a member can tape record a meeting or bring a court reporter to a meeting. The appeal committee and trial committee have said you can't but the appeal committee and the trial committee have no authority under the International constitution or any other constitution to make any such ruling. The International constitution does not limit the right of a member in that respect or anything remotely approaching that respect.

And the International is all there is. There are no more bylaws, it is the bylaws. The general executive

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board did make a ruling. That ruling is before your Honor in Exhibit 3, I think to the first of the affidavits, and in it it directs the trial committee to have a secretary make official minutes. It says nothing about a -- the accused member tape recording or making minutes or having a stenographer making minutes. All it does is direct the trial committee to have the secretary take down minutes which, as your Honor can see, the jottings that a member of the committee takes down. I believe it was Mr. Schlesinger himself who refers to it as jotting down.

THE COURT: Well, the point is, I assume that the statment of any witness is written out and they are asked to read the statement.

MR. HALL: What happened in the first two trials and of course that's all I know about that is the charging parties came in and read something that had been prepared by somebody and also testified to some extent beyond that. But statements, as your Honor knows, are not evidence itself, you can't cross-examine a statement.

Now, what happened in the third trial, I don't know. The statement the plaintiffs tried to submit to the December 18th meeting couldn't, and they simply mailed it is simply a protest and a statement of a desire to tape record.

At the January 8th hearing they attempted to submit a supplemental statement in which they pointed out that even the official minutes of the December 18th hearing, even though it only lasted a few minutes, even those hearings were falsified. On top of the fact that the hearings in' the prior -- the official minutes of the prior trial had been falsified. They pointed out this was one of the meetings they felt --

THE COURT: Let me ask you, is.there a claim here in this action that the committee itself was biased and improperly appointed?

MR. HALL: Yes, there is. It is alleged it was hand-picked in effect by the officials. What happened is that the officals did not post a notice of the meeting on the bulletin board. They didn't publish it in the official International newspaper and didn't post it on the bulletin board until about a week before the trial. Usually it is a -- a week before the membership meeting. Normally it is posted a month and a half or more before the meeting.

THE COURT: So, very few people appeared at the meeting?

MR. HALL: That's right, and basically controlled by the business agents and by by the manager.

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And it is our belief, it is our position that it was hand-picked. The chairman of the committee has since served on several other committees by appointment as an official and basically we say that these are people who are essentially under the control of the officials. I am not making that allegation in my motion for preliminary injunction because it is obviously an -- I am asserting first of all we are denied the right to make a record. We are denied the right to attend a hearing and also that the suspension on its face is contrary to law. That is a more technical matter.

But since they were not suspended from membership, but they were suspended from certain of the rights, of membership rights, which are guaranteed them by Section 1018A of the equality rights and privileges to attend membership meetings, and I say that type of punishment is simply unlawful and cannot be imposed. Of course, that's a secondary allegation.

My main allegation is we were denied a fair trial both because we were excluded from it and because we were denied the right to make a transcript of it. There are cases on this question. Only the Hart case actually concerns a tape record. There are the two other cases cited.

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My memorandum in which the member brought with him a court reporter and sought to make a record. He was not allowed to. The Court held without making a rule for every situation said that the refusal to let them make a record was a violation of a full and fair hearing in those instances.

THE COURT: You say you have those cases cited in your brief?

MR. HALL: That's right.

THE COURT: What Court decided that?

MR. HALL: I believe one was the Court of Appeals.

MR. SCHLESINGER: Judge, I have copies of it to hand to you, and I am going to hand --

MR. HALL: The Kiepura case was the Northern District of Illinois. The second case I have cited, Kugler against -- that was the Court of Appeals for, I guess, the Fifth Circuit, I don't see the citation. I have discussed them --

THE COURT: Did you submit a brief here?

MR. HALL: Yes, I submitted a memorandum and a reply memorandum.

THE COURT: What page of your memorandum --

MR. HALL: The page I am looking at is Page 7.

I believe that point begins on Page 2. That is the refusal to allow them to make a record. That is my first memorandum. I discussed the Hart case earlier on Page 3, 4 and 5.

As to the citation of the Hart case I would first of all like to make an apology, then a correction. In quoting from a paper, the union trial committee reporterd that case, I neglected to put in three dots. When I was looking through the papers in order to show them to Mr. Schlesinger I noticed that I had made that error and I drew it to Mr. Schlesinger's attention and showed him the entire trial committee reports and made a copy for him in fact. He is in error when he says he drew it to my attention; he didn't, I drew it to his attention. And as soon as I had found it I wrote to your Honor to point out that I had omitted the three dots. That is on Page 4. I am sorry to --

THE COURT: Is that Page 4?

MR. HALL: Page 4. Hart is the situation where the man was excluded from the trial because he wanted to tape record it. Kiepura and the Kuebler cases were -- well, Kuebler and Kiepura is a situation where the plaintiff tried to bring a court reporter. Kuebler is where they refused to give him the documents. Those are cited on

Page 7 and Page 5.

THE COURT: I see. So that what we have left here is the question of the right to have a tape recorder and the question of whether the hearing committee itself was improperly selected because of insufficient notice of the meeting.

MR. HALL: Well, there are additional questions. For example, the two lay counsel did not have a tape recorder. The defendant Rosario had a tape recorder. Yet the two lay counsel were also excluded.

THE COURT: Well, I just asked Mr. Schlesinger about that. He said they would be entitled to have counsel present at the hearing to cross-examine witnesses.

MR. HALL: They weren't told that. Instead, the trial committee chairman simply told them, we will have the trial without you and walked away. And nothing was said to them. The trial committee went in behind a locked door --

THE COURT: Well, he is now saying that they have that right.

MR. HALL: I think this right was invented -- or this offer was invented after the fact by the defendants. Certainly the plaintiffs were not given any practical opportunity to attend the trial. The door was locked on

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them. And that issue is in dispute, Mr. Schlesinger says they didn't lock it, all the plaintiffs have submitted affidavits in which they showed the union officers who went in and out used a key.

But the issue of whether you can make a tape recording -- bring a tape recorder is a question quite close to the center of the case. I would like to point out two things.

First, the union have unequivocally refused to allow a court reporter to be brought in. In fact, in an affidavit to this Court, two affidavits to this Court, one in this case and an earlier affidavit which they submitted to this Court last Fall in connection with the companion case, they stated flatly, we won't allow a court reporter or court stenographer because we think a court reporter might violate his oath and falsify the transcript at the request of the person who hired him. And that is why they won't allow a court reporter. They won't allow a tape recorder because they say -- they say because --

THE COURT: That is in somebody's affidavit in this proceeding?

MR. HALL: The affidavit of Nat Klein, the most recent affidavit that was submitted in this proceeding.

But the earler affidavit I am referring to is in Rosario v. Dolgen, which is the case attacking the first two trials.

Incidentally, your Honor asked why were those two trials declared invalid. Well, at the first one Dolgen sat on the trial body, actually conducted the trial de facto as chairman and the man next to him was normally the chairman and the witnesses whom Dolgen brought on his side, several business agents, also sat on the trial committee. And they all participated in deliberations in the finding of the plaintiffs guilty. That was thrown out on appeal.

And the second hearing, the same trial committee, but without Dolgen and the business agents tried the plaintiffs all over again on the same charges. The trial committee had unanimously found them guilty the first time they sat again and found them guilty at the second trial. That was not thrown out.

The plaintiffs brought suit and after the plaintiffs brought suit the general executive board which is not an appellate body -- that is, you can't appeal to it, but can act on its own motion, It then ruled that there should be a third trial.

THE COURT: All right. Well, let me try to

get the issues now. So, with respect to the third trial, it is your claim that insufficient notice was given to the membership?

MR. HALL: That is one of my claims, yes.

THE COURT: That is one of your claims.

MR. HALL: Yes.

THE COURT: Then with respect to the third hearing itself they were denied the right to have a tape recorder and they were denied the right to have their lay counsel present at the hearing that did take place.

MR. HALL: Yes. And of course they were denied themselves the right to be present.

THE COURT: Well, I guess the tape recording in that --

MR. HALL: That was bound up, yes. What I wanted to get at in talking about the court reporter is that the cases that deal with court reporters, Kiepura in particular, are directly applicable here because here the situation -- there is no distinction drawn by the union between tape recorders and court reporters. They told the plaintiffs they took the position court reporters were barred as well. Obviously it would have been foolish for the plaintiffs to have hired a court reporter to have

him ordered away.

THE COURT: All right. I will hear from Mr. Zimny now. And which defendant do you represent, the local?

MR. ZIMNY: I represent the International union. Mr. Schlesinger represents the local.

THE COURT: All right.

MR. ZIMNY: The International union is a party to this action in which it has played a very minor and incomplete role. It is sued allegedly because it imposed and enforced disciplinary punishment on the plaintiff. You will find that in Paragraph 24 of the complaint. As a matter of fact, the International union sits only in a limited and solely appellate capacity and it neither imposes punishment, continues punishment or does anything of the sort and any injunction sought against it is obviously misplaced.

The complaint also alleges that the plaintiffs have exhausted internal remedies. That is in Paragraph 25 of the complaint. We very strongly contend, and this is a very strong issue in this case, that they have not. They have instead blocked the hearing of their appeal.

THE COURT: Interference of your body?

MR. ZIMNY: Yes, by refusing to abide by a

ruling of the committee that they may not use tape recorders. Let me add that --

THE COURT: Is there a reason for that? Does the International have a reason for that?

MR. ZIMNY: Yes.

THE COURT: What is that?

MR. ZIMNY: The reason for that is that tape recorders are inherently productive of problems, of confusion and not notariety . Not only recent events but also the inherent use of a tape recorder would produce -- the approach under the ILG constitution which goes back some 75 years, and you have affidavits before you, uncontradicted to this effect, privilege for internal proceedings which are tailored to laymen. They are informal, and they call for informal minute taking that has always been the approach and there has been no exception in this case. The use of a tape recorder is productive of the argument.

THE COURT: Well then, there was a charge made that the minutes are not properly recorded. What suggested remedy do you have for that?

MR. HALL: The remedy for that matter is to be argued before the appellate body, what was in fact done in this case. Minutes of that appeal hearing are

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incomplete, because the appeal hearing is incomplete, it is attached to the second affidavit of the secretary of the appeal board who is himself an attorney and a member of this Court. You will find that the only portion of the minutes taken by the trial committee which would --

THE COURT: Who is a member of this Court?

MR. ZIMNY: The secretary of the appeal committee of the general executive board is an attorney. He is licensed to practice in New York and --

THE COURT: I thought you said he was a member of this Court.

MR. ZIMNY: Yes, yes. That is exactly what I said.

THE COURT: He is admitted to practice in this Court? I thought you were talking about a Judge when you said a member of this Court.

MR. ZIMNY: No, no. I meant admitted to practice before this Court. The minutes which he took and which are attached to his second affidavit show very clearly that the only portion of the -- show very clearly what the approach is and what occurred when that approach was pur[illegible]n this case. The approach is that any question concerning the minutes below are put to the appeal body. The appeal body hears both sides and makes a ruling.

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That is exactly what happened in this case. But only part of those minutes which we questioned was a colloquy dealing neither with decision or any ruling of the trial committee below. Consequently that was deemed to be insignificant and not material. The only other thing that was questioned was a failure to include a statement which plaintiffs allegedly made. That statement however was in writing and was part of the record before the appeal committee.

Now, let me go on with the International remedy part because it should not be overlooked. I think it is critical and is dispositive of this application as well as the entire lawsuit. The appeal here has still not been heard. And it has not been heard because these plaintiffs have refused, though there were three rulings made at an appeal committee hearing, time was allowed to them to think it over and five letters were exchanged between them and the secretary to the appeal committee.

THE COURT: Were they permitted to have their lay counsel present?

MR. ZIMNY: Of course. They were present with lay counsel. They were not only permitted, they were present with lay counsel. They were invited and informed of the right to an appeal.

THE COURT: So, the only issue with the International is the tape recorder, is that it?

MR. ZIMNY: It is the tape recorder and their failure and refusal to complete the appeal committee hearing because they will not abide by the ruling of the appeal committee that they may not use a tape recording.

THE COURT: Well now, with respect to that ruling, is that a ruling made by the general executive board?

MR. ZIMNY: It was made by the general executive board on two separate occasions.

THE COURT: Do you have a copy of that decision? That ruling?

MR. ZIMNY: In order to discern that decision one has to look both at the -- you will find Exhibit D attached to the affidavit of James Lipzig, under the notice of motion. He has two affidavits, that is, his original moving --

THE COURT: Just a moment. Let me find it. Is that his affidavit filed August 17th?

MR. ZIMNY: Yes, your Honor.

THE COURT: And where is that ruling? What exhibit is that?

MR. ZIMNY: Exhibit D contains the ruling --

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contains the decision of the GEB. Attached to it is the decision of the appeal committee. Now, let me call your attention --

THE COURT: Well, just point out to me where that ruling is.

MR. ZIMNY: Yes, I will be glad to. The appeal committee had sustained the ruling of the grievance committee below, this is now in trial No. 2 we are talking about and these documents are what gave birth to trial No. 3, which is before you in this action.

So, just give me a few minutes and let me trace it back to make it clear. The hearing in trial No. 2 had come before the appeal committee. The appeal committee had made several rulings. One of the rulings was that the executive board of Local 10 sitting as a grievance committee could properly hear the case.

THE COURT: Now, Mr. Zimny, I want this record to be as clear as possible. Could you please direct my attention to the ruiling which precludes a tape recorder? I don't want to hear all that leads up to it. I don't want to hear about ten other rulings.

MR. ZIMNY: I want to tell you enough about other rulings that --

THE COURT: I don't want to hear it.

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MR. ZIMNY: All right. You will find on the third page of the appeal committee's decision which is under the top sheet, that is the first sheet of the appeal committee decision under the top sheet, if you will turn to the third sheet and you look at Paragraph 5 you will find the appeal committee saying --

THE COURT: Is it Page No. 3?

MR. ZIMNY: No, it is not No. 3 -- yes, it is numbered 3, I am sorry. The numbers are on top. Now, look at Paragraph --

THE COURT: All right, I see it.

MR. ZIMNY: Paragraph 5 reads: "Local 10 executive board properly refused to allow the appellants to make an electronic recording of the hearing. Under our constitution there is only one official record of a disciplinary proceeding prepared by the secretary of a trial or appeal body. The wisdom of this rule has been corroborated by the evidence in recent public history of the manner in which tapes can be manipulated."

The decision of the general executive board reversed the appeal committee in one respect, that is with respect to the triers of the case.

THE COURT: Well, let me ask about this ruling.

MR. ZIMNY: Yes, I am coming to it. With respect to minutes you will find in Paragraph 2, that is the top page now of Exhibit B, that is the ruling, the decision of the general executive board --

THE COURT: Paragraph 2 of the same --

MR. ZIMNY: Top page. It is a one-page document. Paragraph No. 2. It is headed, decision of general executive board, and so on. Do you see that?

THE COURT: I am looking at the first page, Paragraph 2.

MR. ZIMNY: Yes, the very first page, Paragraph No. 2.

THE COURT: How does it read?

MR. ZIMNY: It reads: "The trial committee shall select one of its members as a chairman, it shall also select a secretary from among its members who shall prepare the official minutes of the hearing which shall be filed in the offices of Local 10. The official minutes and two copies thereof shall be made available in the offices of Local 10 by either the charging party or the accused upon their written request thereof. True copies of the minutes shall be furnished if so requested in writing". This was a firm answer of the ruling of the appeal committee regarding official minutes and the

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non-use of tape recorders. There was in addition to this ruling an affirmance by the general executive board in February of this year that precedes the appeal committee hearing we are talking about here in a case involving these plaintiffs and their counsel of a ruling of the appeal committee which again disallowed the use of tape recorders holding that under the ILGWU constitution the official minutes are minutes taken by a secretary, non-verbatim minutes taken by a secretary.

Now, that ruling is reflected in the second affidavit, the reply affidavit --

THE COURT: Well, as I understand plaintiff's counsel they challenge the authority of this board to make this ruling. Is that it?

MR. ZIMNY: No, they challenge the authority of an appeal committee to make the ruling.

THE COURT: But this was made by the general executive board?

MR. ZIMNY: That's right. They agree that the general executive board can make such a ruling. They say it repeatedly in their papers. The authority for it is cited in our papers and they do not dispute it.

THE COURT: And you say the general executive board repeated that ruling later?

MR. ZIMNY: Yes, repeated that ruling in a subsequent case the decision in which preceded the appeal committee hearing in this case. It was in February of this year. That is reflected in the second affidavit of Mr. Lipzig which is a reply affidavit, and that is dated the 30th day of August 1976.

THE COURT: And what page is that? I see it, it is on the third page, it looks like, of the minutes.

MR. ZIMNY: It is probably in Paragraph 14.

THE COURT: I see it.

MR. ZIMNY: February 25, 1976,yes. Paragraph 14, Page 6.

THE COURT: Well, I am looking at a document which says minutes of appeal committee dated April 8, 1976.

MR. ZIMNY: That is the exhibit you are looking at, the exhibit to the affidavit.

THE COURT: All right. And in that exhibit on the third page it says: "The hearing on January 8th, the accused refused to comply with the trial committee ruling that they must not use tape recorders or any other electronic devices to record the hearing."

MR. ZIMNY: That's right. That is the opening of the minutes which describes what occurred below.

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That is an exhibit to Mr. Lipzig's affidavit. And those are the minutes of what occurred at the trial committee hearing. In those minutes you will also find references to challenges to the minutes of the trial committee below to which I referred earlier.

THE COURT: Well, what is the ruling?

MR. ZIMNY: Pardon? The ruling is not a ruling in this case. It is a ruling in a companion case involving plaintiffs and their counsel, which ruling by the general executive board preceded the hearing by the appeal committee in this case. And so the GEB had then for the second time ruled that tape recorders may not be used under the constitution.

THE COURT: Where do I find that?

MR. ZIMNY: You find that in Paragraph 14 --

THE COURT: Of the affidavit?

MR. ZIMNY: -- on Page 6 of Mr. Lipzig's affidavit.

THE COURT: I see. All right, I see it now. That is the only issue you --

MR. ZIMNY: Let me say one more thing. It is difficult for me to know whether or not you would consider it very important. There was no request whatsoever made of the appeal committee of the general executive

board of ILGWU by these plaintiffs to use a stenographer. You will see that reflected in the minutes which you just glanced at attached to Mr. Lipzig's affidavit. As a matter of fact --

THE COURT: To use a stenographer of their own choosing?

MR. ZIMNY: Well, to use a public stenographer, right. As a matter of fact, in attempting to justify the use of a tape recorder before the appeal committee they cited another case involving one of them in which a stenographer was allowed -- the chairman of the committee distinguishing the use of a stenographer from the use of a tape recorder said that does not justify the use of atape recorder. He distinguished that, and yet in the light of that they never asked to use a stenographer. So that question has never been passed upon --

THE COURT: You say they relied on the case which permitted --

MR. ZIMNY: They relied on some case in the past.

THE COURT: Which permitted --

MR. ZIMNY: Where they claimed an --

THE COURT: Which permitted them to bring a public stenographer?

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MR. ZIMNY: Which they claimed permitted them to bring a public stenographer. In which they claim they were permitted to use a public stenographer. The chairman without yay or naying that assertion said the use of a public stenographer is distinguished from the use of a tape recorder, the use of a tape recorder being subject to fraud and --

THE COURT: Where did he say that? Where is that?

MR. ZIMNY: Yes, I will get it. If you will look at the bottom of Page 5 of the exhibit.

THE COURT: Which exhibit?

MR. ZIMNY: At the bottom of Page 5 of the exhibit you will see --

THE COURT: The bottom of Page 5?

MR. ZIMNY: The bottom of Page 5 of the exhibit.

THE COURT: Yes.

MR. ZIMNY: You will see there Representative Kurtz, you asked whether they were permitted to use lay representatives. Here is the minutes representing it. Representative Kurtz answered that the appellants stood ready to proceed. Chairman Kramer asked whether that meant the appellants would or would not rule for

recorders and whether or not they would accept the ruling laid down by the ILGWU constitution. Representative Kurtz replied only that the appellants stood on his statement. Appellant Rosario intervened to state that this did not involve any interference with the official minutes. Representative Kurtz said that there was a precedent because a public stenographer had been used some years back in an election appeal case by Hershaw. Chairman Kramer ruled that at no stage in these proceedings or at this time had the appellants made any request for use of a public stenographer in the hearing.

He then went on to distinguish between a public stenographer and tape recorders which can be doctored.

THE COURT: Are you suggesting that if they brought a public stenographer now they could complete this hearing before your body?

MR. ZIMNY: Your Honor, I am in no position to speak for the appeal committee. I don't know how the appeal committee would rule. I could only tell you what occurred, which is that --

THE COURT: No, I don't understand that kind of argument. I thought you were suggesting to me that if they had asked for a public stenographer they would have had it as opposed to a tape recorder. Now you are

telling me you don't know how the committee would rule.

MR. ZIMNY: I cannot guess at how the appeal committee would rule. I am not a member of the appeal committee.

THE COURT: Well, why is --

MR. ZIMNY: I suggested it only because plaintiff's counsel has repeatedly stated that whether it be tape recorder, public stenographer or any other form of recording, all would be denied plaintiffs. I am telling you that that is incorrect. That with respect to the appeal committee no request other than the use of a tape recorder was ever made though colloquy and the point of tape recorder as compared to other recording measures took place. And the vice of the tape recorder was mentioned. Moreover, as I have just indicated to you, the chairman pointed out that no request was ever made for the use of a public stenographer. And yet no request was then forthcoming. In the light of this --

THE COURT: Let me ask you this: This hearing which is incomplete, is that like a hearing de novo?

MR. ZIMNY: Yes. You see, an appeal committee hearing is in fact a hearing de novo of what took place below. All witnesses are assembled, all statements are assembled, all minutes are assembled and another hearing --

THE COURT: That is what is going on now?

MR. ZIMNY: That rests incomplete, right now.

THE COURT: All right. Well, I want to know whether the committee would allow a public stenographer to be brought by the plaintiff as to that.

MR. HALL: I think I can answer your Honor by reading from the affidavit of Mr. Schlesinger. On Page 21 of Nat Klein's affidavit we have a statement, "It has been the tradition of the ILGWU and its locals and its other subordinate organizations not to permit the use of stenographers at grievance committee hearings, grievance committee trials or at GEB appeals committee hearings."

Unless he is lying, what the meaning of that is that they refused to allow a stenographer at the appeal committee hearings. Now, that's --

THE COURT: Mr. Schlesinger is the lawyer, is that right?

MR. ZIMNY: Judge, that is decidedly not the case. He cites from an affidavit by an officer of the local union.

THE COURT: Now we are going to continue the hearing until next Tuesday, and you bring down the chairman of this committee to testify here. I want to know what the facts are in this case, whether he would

be denied a public stenographer.

MR. ZIMNY: The secretary rather than the chairman? I don't know if the chairman will be available, the secretary is. He is the one who made these affidavits.

THE COURT: Well, we have got to have somebody who can speak for the committee.

MR. ZIMNY: Yes.

MR. SCHLESINGER: Your Honor, may I reply briefly? You said --

THE COURT: No, we are going to recess. I have other cases. We are going to recess until Tuesday at 4:30.

MR. SCHLESINGER: Will your Honor give me five minutes, please?

THE COURT: No, I am going to recess until 4:30 on Tuesday. And you bring down somebody who can speak for this committee, Mr. Zimny.

MR. ZIMNY: All right.

MR. HALL: I would like to tell Mr. Zimny that he --

THE COURT: We are not going to hear anything else, Mr. Hall, not today.

MR. HALL: All right, your Honor.

[Time noted: 3:30 p.m.]

Exhibit 8

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

TOMAS ROSARIO, OVIDIO VEGA and RAY CABEL,

Plaintiffs,

-vs-

76 Civ. 3204

AMALGAMATED LADIES GARMENT CUTTERS UNION, LOCAL 10, of ILGWU and ILGWU, AFL-CIO,

Defendants

----------x

B e f o r e :

HONORABLE CONSTANCE B. MOTLEY,
District Judge

New York, New York
September 14, 1976--5:15 p.m.

A P P E A R A N C E S:

BURTON H. HALL, ESQ.,
Attorney for Plaintiffs

EMIL SCHLESINGER, ESQ.,
Attorney for ALGCU

MAX ZIMNY, ESQ.,
Attorney for ILGWU

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THE COURT: Mr. Zimny, have you produced now someone from the International, that you represent here, who could tell us about the procedure of these appeal hearings?

MR. ZIMNY: Yes.

THE COURT: Have the witness come up and be sworn.

MR. ZIMNY: Your Honor, I want to call to your attention the fact that I filed with you an affidavit of the International Ladies' Garment Workers Union which, I think, is relevant to the area they are inquiring into at this time.

THE COURT: Is this the president?

MR. ZIMNY: No. This is a member of the Appeal Committee authorized to speak for him, but this affidavit contains an interpretation of the constitution by the president concerning that --

THE COURT: I think this is a motion for a preliminary injunction.

MR. HALL: I have not been heard in opposition to Mr. Zimny's point about exhaustion of remedies, and I would appreciate --

THE COURT: Exhaustion of remedies?

MR. HALL: That's his point. He claims we didn't

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exhaust remedies from the punishment imposed in January of this year.

THE COURT: I thought a hearing was under way?

MR. HALL: No, your Honor. They filed an appeal. There was an aborted hearing which the Appeal Committee decided to put it into. The plaintiss have continued to try to press their appeal. Nothing has happened. That's why they brought this application, this suit.

As I understand it, the only significance of Mr. Zimny's argument here is his contention that somehow or other we had no done something we should have done. He is arguing that we didn't exhaust our remedies.

THE COURT: We can only take one thing at a time, Mr. Hall. He was telling me about an affidavit. I am telling him that this is a hearing for a preliminary injunction. We cannot cross-examine an affidavit. When we continued this I told him to produce someone here who could speak for the Committee so we could find out what the facts are You are talking about an entirely different point.

M U R R A Y G R O S S, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

BY THE COURT:

Q What is your position with the International

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Ladies' Garment Workers Union?

A I am a vice-president of the ILGWU, general manager of the Board, and a member of the Appeal Committee.

Q With respect to the appeal by union members who have been disciplined by locals of the ILGWU, is a union member permitted at the time of his appeal to bring a court stenographer or other public stenographer with him to the hearing for the purpose of making a record of the proceedings at that appeal hearing?

A The question never came up before the Appeal Committee. We acted before now if a certain party wanted to bring tape recorders we objected to that.

THE COURT: Please read the question to the witness.

(Record read.)

Q Do you understand the question?

A The answer is that that question never came up.

Q That question can be answered yes or no.

A The document that you have before you, the president is making --

Q I have not read the document. I am asking you -- and that's why you are here -- whether a member can bring a stenographer to transcribe minutes of the meeting.

A I made my answer. The question never came up

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before the Appeal Committee. We have no ruling on the subject.

MR. ZIMNY: Your Honor, may I be heard for a moment?

THE COURT: Yes.

MR. ZIMNY: You asked that I produce someone authorized to speak for the Appeal Committee with respect to the use of a stenographer by these plaintiffs at a de novo hearing of the Appeal Committee if plaintiffs were to request such use. I produced Mr. Gross in that capacity to answer that inquiry.

In addition to that, I produced an affidavit which deals with the intepretation of the constitution as required by the constitution which confirms an interpretation already communicated to you.

The Appeal Committee met yesterday and took up this question at my request following your request to me. The Appeal Committee adopted the position set forth in this affidavit as its own with respect to the use of a stenographer at the de novo Appeal Committee hearing regarding these plaintiffs.

THE COURT: I am certainly no more enlightened by your statement than I was a few minutes ago.

Are the plaintiffs permitted to bring a court

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stenographer or not?

MR. ZIMNY: The answer is no under ordinary circumstances. There would have to be some special circumstances in order for that to be permitted. These tribunals are lay-tribunals, and they are conducted, and have always been conducted, in the informal way which I told you about in argument and which is also recited in this affidavit. The president, in this affidavit, also tells you that should you feel that there are special circumstances that he and the Appeal Committee would go along with the use of a stenographer under the conditions set forth. You will find them beginning on page 5 of the affidavit. I transmitted it now in this form so there would be no misunderstanding and everything would be clear to the Court.

MR.HALL: I submit whatever the Appeal Committee might want to do from this day forward is irrelevant to the question. The issue is whether they would have been permitted to bring a court reporter during the period they were appealing after their punishment. As I understand Mr. Zimny, he now concedes they would not have been permitted to bring a court reporter.

MR. ZIMNY: The issue is that they never asked to use a court reporter. They tried to do what they have done below, use a tape recorder. That was denied to them.

I showed you, and there is attached to the second affidavit of the secretary of the Committee, the minutes of that meeting which contains rather dramatic clear evidence of a failure on their part to request the use of a court reporter. It was that that I was telling you and at that point you said, "What if they should ask for it? Would the Appeal Committee permit it?"

I answered that I did not know; that the question had not come up and I could not speak for the Appeal Committee.

THE COURT: That's why I said that you should bring someone.

MR. ZIMNY: Yes. You said that.

THE COURT: Did you bring someone?

MR. ZIMNY: Yes. Mr. Gross is a member of the Appeal Committee who has been authorized by the Committee to do so. The Appeal Committee adopted an official position on this. It is in accord, very completely with what is set before you in a written affidavit by the president of the union, who is authorized to interpret the constitution. Both the president and the General Executive Board under the constitution are authorized to interpret.

THE COURT: I still don't know the answer to my question.

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I will ask the court reporter to read this witness' answer to the question.

(Record read.)

B2 MR. ZIMNY: What the witness is saying is that the plaintiffs never made the request before the Appeal Committee.

MR. HALL: I do not think it is appropriate --

THE COURT: Mr. Zimny is speaking, Mr. Hall.

MR. HALL: I am only suggesting --

THE COURT: Mr. Zimny is speaking. We cannot have lawyers cutting across here. You will have a chance to speak. The reporter can't get it if he is speaking and you interrupt.

What were you saying?

MR. ZIMNY: What I was saying was Mr. Gross is saying that there was no request ever made to the Appeal Committee by the plaintiffs to that effect; therefore there was no ruling by the Appeal Committee.

You had inquired of me what would be their ruling had a request been made. Being unable to answer that inquiry I have produced a member of the Appeal Committee who can furnish that answer, the Appeal Committee having considered that question yesterday.

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BY THE COURT:

Q You can furnish the answer now. What is the answer?

A The president has decided to make an exception in this case if you so rule that there are special circumstances to allow a court stenographer to come to these hearings. Under certain conditions the president and the Appeal Committee will allow a court reporter to come to these hearings.

MR. HALL: I want to register an objection to the coaching of the witness.

Q You say if the Court would order it then the Committee would --

A That's correct.

Q But otherwise he is not entitled to bring a stenographer?

A In this particular case if you so rule that this is a special case that requires a court stenographer we shall make an exception and allow it.

Q Otherwise a union member --

A These circumstances, we say, is not a precedent for the future. This is a special ruling for this case.

THE COURT: Are there any questions for this witness?

BY MR. ZIMNY:

Q Under ordinary circumstances, said the Appeal Committee in this affidavit, the use of a public stenographer is not permitted under the constitution?

MR. HALL: I want to object to Mr.Zimny, first of all testifying, and also telling the witness what to testify to.

MR. ZIMNY: I am not testifying. I am clarifying.

THE COURT: Do you want to ask the witness any questions?

MR. HALL: I do.

THE COURT: You can.

BY MR. HALL:

Q Mr. Gross, is there a proceeding by which the Appeal Committee can hear an appeal without a hearing?

THE COURT: Pardon me?

Q Can the Committee hear and decide an appeal without a hearing?

A If notice is given to all the parties involved and if one or the other party does not show up, on some occasions the Appeal Committee has acted on the available testimony without the other side being present.

MR. ZIMNY: Your Honor, doesn't that go beyond

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the scope of the direct inquiry?

THE COURT: Yes.

MR. HALL: Your Honor, it is true, this is outside the scope of direct, but it does seem to me that it is relevant to the issue for which the witness was called.

THE COURT: You now want to call him as your witness?

MR.HALL: If it is more convenient to do so.

THE COURT: Suppose we complete this issue and then you can go on.

Do you have any questions on the stenographer.

MR. ZIMNY: No.

THE COURT: Are there any questions on the action taken by the Committee?

MR. ZIMNY: I simply want to call your attention to the conditions set forth in the affidavit beginning with page 5, which are the same conditions the Appeal Board adopted yesterday.

THE COURT: As I have indicated, at the last hearing the Court called for the production of a witness who could tell us whether or not a public stenographer would be allowed to clarify the facts in this case. The Court might render a decision.

I gather the witness has testified as far as

he can on that issue.

You may come down.

MR. ZIMNY: One more thing, your Honor, since doubt was cast about the affidavit and the inability to cross-examine it. Let me establish through the witness a key fact.

BY MR. ZIMNY:

Q Mr. Gross, would you please look at the president affidavit beginning at page 5 and go to the end of it. I want to ask you a question concerning that.

A (Pause)

MR.HALL: I don't understand. How can a witness be questioned about an affidavit? The affidavit can refresh his recollection, but this is not his own affidavit.

MR. ZIMNY: He saw this affidavit. He already testified the Appeal Committee adopted the procedure set forth in the affidavit. I want him to answer directly the question as to whether or not they adopted it, and whether that procedure is accurately set forth in the affidavit beginning on page 5, so that you have a live witness here to cross-examine regarding what the Appeal Board did rather than an affidavit which was --

A I read it and I agree that this is what we acted on yesterday, and this is the position of the Appeal

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Committee and the president.

MR. ZIMNY: No further questions.

THE COURT: Is there anything further on this issue?

BY MR. HALL:

Q This was after discussing with counsel what had happened here in court last week; is that correct?

A Did I discuss it with counsel?

Q Did the Appeal Committee.

A Counsel was present when he presented this change the position of the president. He explained what happened last week, yes.

Q So it was in response to that, in this case, that the Appeal Committee did whatever it did do?

A I understand that the Appeal Committee acted because the judge in this case asked our attorney what would be the position. We got together and we gave our position.

Q But it has always been the position in the past that nobody can have a record made whether by a stenographer, a court reporter, or any other means?

A That question never came up. The only thing that came up was the tape recorder. We rejected that.

Q Isn't it a fact that the Appeal Committee has repeatedly said that the very fact that an official record

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is to be made by a secretary of the Committee implies that nobody else can make any record at all? Is that correct?

A It does not imply that at all. It implies what the constitution says, that the secretary of the Committee keeps the record. If a question of a stenographer ever came up the Appeal Committee would probably give an answer on that.

Q Do you know a Mr. James Lipsig?

A Yes.

Q Does vr. Lipsig serve the Appeal Committee in some capacity?

A He is the secretary.

Q Does he notify people about ruling of the Appeal Committee?

A I assume so.

Q Have you ever seen letters that he sent out to people explaining what the Appeal Committee's ruling was?

A I have not seen all the letters. I may have seen some.

MR. ZIMNY: I will object to this as going beyond the scope of the direct.

THE COURT: We have finished with the issue of whether the stenographer would be allowed. I am permitting Mr. Hall to call the witness now as his own witness on this

pgds

motion, so long as it is relevant to the issues on this motion.

Q I hand you a copy of a letter which is attached to the papers, but I am handing you a different copy. It is dated May 28, 1976 to Mr. Rosario, Mr. Vega, and Mr.Cabel from James Lipsig. I ask you whether you have ever seen that letter or a letter which is a copy of that letter?

A I don't think I saw this particular letter.

Q Were you present at the hearing on appeal in April involving Mr. Rosario, Mr. Vega, and Mr. Cabel?

A In April?

Q Yes.

A I am not too sure. There was some Appeal Committee that I was absent at. I cannot be sure.

B3 Q Were you present at the hearing of a case brought involving Mr. Baladino and Mr. Kline about a year ago?

A If I saw the case I might be able to answer you.

Q If you saw the case --

MR. ZIMNY: Can you be specific as to when and where the hearing took place and before whom?

MR. HALL: In or about November 25, 1975, and involving charges brought by Mr. Spitzer, who is here, against Mr. Baladino and Mr. Kline.

A I don't remember.

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MR. ZIMNY: What parties were those charges being heard by at the time?

MR. HALL: I'm talking about the Appeal Committee hearing, Mr. Zimny. This is a case described in the affidavit of Mr. Lipsig which you submitted in paragraphs 14 and 15.

Q Do you recall --

A Is that the Local Appeal Committee?

Q This is the Appeal Committee of the General Executive Board.

A I could not positively swear I was present. Sometimes I was absent. Sometimes I was part-time and had to leave. I had a job to attend to.

Q Let me read you a sentence that is quoted by Mr. Lipsig in his affidavit. This is page 7. I ask you whether in any instance in which you sat on the Appeal Committee the Appeal Committee made a ruling to the same effect:

Under our constitution there is only one official record of a disciplinary proceeding prepared by the secretary of a trial or Appeal Committee.

A I repeat, that's our constitution.

Q Is the meaning of that, that nobody else can prepare a record?

A The judge will make the interpretations. I cannot interpret anything. I tell you what the constitution provides.

Q You are a member of the Appeal Committee?

A Right.

Q You are familiar with its decisions and practices.

A Right.

Q Is the meaning of the position wich you have just acknowledged that the official record, that is to say the notes taken by the secretary, is the only record that anybody can take?

A That's an interpretation. You want the constitution interpretation, read the constitution.

THE COURT: This sounds like an argument with the witness.

BY THE COURT:

Q How long have you been on this Appeal Committee?

A A number of years. I was appointed to it six or seven or eight years.

Q During the course of a year, how many appeals would you say there are, approximately?

A About 3 a year, maybe sometimes less.

Q Do you recall at any of those meetings anyone taking or making a record of the proceedings other than

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the secretary?

A No.

THE COURT: Is there anything further on that issue?

BY MR. HALL:

Q Nobody has ever been brought or allowed to bring a secretary or a stenographer or court reporter?

A That question never came up.

Q I show you a letter, which is Exhibit H to the affidavit of Mr. Lipsig, and I ask you whether this is a form letter which you have seen copies of before.

A I could not swear to that, either.

MR. ZIMNY: Just a moment. Let me see it.

(Pause.)

Are you referring to the letter dated March 17, 1976?

THE WITNESS: Yes.

MR. ZIMNY: All right.

A I could not swear to this. This is a form letter. I am not the secretary. I have not seen these letters.

Q Have you ever sat on the Appeal Committee when it considered an appeal without a hearing?

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A I told you before in my experience only once did it happen that parties have not shown up for two or three apointments and then we finally acted about one party.

Q And then what?

A We acted without one party being present. That happened once.

Q If the party doesn't show up the Appeal Committee goes ahead and makes a decision on the appeal?

A That happened once after two or three appointments were not kept by one of the parties.

Q Do you know who the charged members in that case were?

A I do not.

Q Did you sit on any of the other Appeal Committees which heard the case of Mr. Rosario, Mr. Vega and Mr. Cabel?

A I think I did.

MR. ZIMNY: I object to that. That's not the case. That's the last case. That's the first of these two cases to which the ILGWU is not a party.

MR. HALL: Obviously it has a bearing on this.

THE COURT: Where is it leading to? What is

the relevance? The objection is on the grounds of relevancy. What is the relevance?

MR. HALL: In one of the appeals that's the procedure that was filed and it was not because people failed to show up but they were given the option of whether or not they have a hearing, and they chose not to have the hearing.

THE COURT: The union member chose not to have the hearing?

MR. HALL: Yes.

THE COURT: What does that have to do with this case?

MR.HALL: Mr. Zimny is complaining because they brought a tape recorder with them it obstructed the holding of the hearing. Even if Mr. Zimny's point was correct, there is nothing to stop the Appeal Committee from going ahead and deciding on appeal. Its failure to decide on appeal is its own problem and not the plaintiffs' problem. We have exhausted our remedies. The fact that they have chosen to pretend that they are still thinking about holding a hearing is irrelevant to the matter. We have pursued our remedies for four months and --

MR. ZIMNY: This is argument. The papers are complete in this respect. Without getting into the

details of this, unless you would like us to, I think you will find that the hearing was adjourned after repeated opportunties were given to these gentlemen to continue the hearing without tape recorders. They were asked to get back to the Appeal Committee when they wanted tape recorders and they never did, despite an exchange of five letters. They were asked in a letter dated March 17, 1976, about which the question was just asked by Mr. Hall, if they wanted to proceed without a hearing but on statements, to say so, and that procedure would be followed. They never said so.

We therefore have an incomplete hearing because they refused to abide by a rule of the Appeal Committee. The Appeal Committee told them they would go forward as soon as they indicated they would abide by that ruling. They have not done so although there have been continued opportunities in writing for them to do so.

They were also told they could make their own notes because in one letter they suddenly said apropos of nothing that had preceded, "This means that I can't make my own notes either," and the secretary assured them they were free to make their own notes.

That's all in the papers.

MR. HALL: I don't know what Mr.Zimny's

remarks have to do with the issue your Honor raised.

THE COURT: I believe his remarks have been enlightening for me as to what you are driving at. That is that this Appeal Committee could have gone ahead and made a decision.

MR. HALL: That's what the witness has testified they normally would have done if the plaintiffs didn't show up. They would have gone ahead and decided the question.

THE WITNESS: I'm sorry. I have never testified to that at all. It is not the normal procedure at all. It happened once and there were certain circumstances I knowof where a party did not show up for two or three appointments. That's the only time we only acted.

Q Mr. Gross, when did this appeal which you have been discussing --

A I cannot testify other than to this statement.

Q When did this appeal which you have been discussing occur?

A I don't know. I did not come prepared for any other questions except the statement that we adopted yesterday.

Q Do you remember whether it was this year?

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A It could have been. I don't remember. It might have been. I don't want to be pinned down on an answer I amnot prepared to answer.

Q Have you ever sat on an Appeal Committee on any instance in which the appellant simply said, "I don't want to come to a hearing"?

A No, I never heard that.

Q What?

A I have never sat on such a case.

Q That opportunity is available to the appellants, is that correct?

A In one case only do I know of where an appeal was set for one meeting and then for another meeting and for a third meeting, and we finally decided to act without the party when the party failed to show up.

Q Do youknow of any reason why once it is clear that the appellants are not going to come or are not going to come under circumstances which are acceptable to an Appeals Committee, why the Appeal Committee should not go ahead and decide the appeal?

A I don't want to speculate or answer such questions. I don't know.

Q Is there any reason known to you why it should not under those circumstances go ahead and decide the appeal?

THE COURT: He just answered this question.

MR. HALL: I don't believe it is an answer.

THE COURT: Read the previous question and the previous answer.

(Record read.)

Q I put the question to you again and ask you to answer it.

MR. ZIMNY: I object to it.. He has responded by saying it is hypothetical and he would not answer. I object to the question on that ground as well.

THE COURT: Read the next question that was asked.

(Record read.)

THE COURT: Do you know of any reason why it should not?

THE WITNESS: I don't know of any, and I don't know that it ever came up. If it ever comes up we will act on it.

Q Mr. Gross, how many members are there of an Appeal Committee?

A Offhand 11. I don't know. I didn't make a count of them.

Q I asked you rearlier whether you had ever sat on an appeal involving Mr. Rosario, Mr. Vegas

pgbr

and Mr. Cabel. I don't recall your answer. Answer again.

A I might have.

Q You might have?

A I don't remember.

Q Do you recall in the spring of this year a hearing before the Appeal Committee and a decision made by the Appeal Committee, the decision under date of April 28, 1975, which I hand to you.

A 1975?

Q Not this year. In the spring of last year. I hand this to you together with a covering letter from Mr. Lipsig to the various participants.

MR. ZIMNY: I object. It is going into the prior lawsuit. We're not a party to that.

MR. HALL: It is relevant to the bias of this Appeal Committee and to its present judgment of the case.

THE COURT: Let's go over this again.

I think the last week when you were here we established that there had been two prior hearings which were reversed by some appeal body of the union. We are on the third hearing now. In thethird hearing the plaintiffs here were found guilty as charged by the union. The plaintiffs were in the process of appeal when

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they filed this suit; isn't that so?

MR. HALL: We appealed in the beginning of February, 1976, and this suit was not brought until July of 1976, the end of July of 1976.

THE COURT: When the Appeal Committee did not act?

MR. HALL: That's right. That is to say, we exhausted our remedy for more than four months.

THE COURT: With respect to the present pending appeal, the present punishment that was imposed after a hearing before the union, you have raised certain issues, the chief one being that this plaintiff was prevented from making his own record of the proceeding.

MR. HALL: That's right. Also that we were denied copies of the official minutes of the previous hearing, and that we were barried from the hearing room, not allowed to even see the trial or hear it.

MR. ZIMNY: That's not quite accurate. They were not denied minutesof the hearings which preceded the ruling for the de novo trial. They were denied minutes of the prior trial which had now been reversed.

MR. HALL: That's what I intended to say.

THE COURT: I was asking what the issues were on this case. Those two that he could bring a

stenographer and was denied prior minutes. Was there a third?

MR. HALL: First of all, we were excluded from the hearing room and denied the right to confront witnesses and cross examine.

THE COURT: That was the hearing before the union?

MR. HALL: Before the local union; that's right.

THE COURT: And that was because they wanted to bring a tape recorder?

MR. HALL: That's the excuse given by the local, yes.

THE COURT: They didn't go into that hearing; is that it?

MR. HALL: They were not allowed. They were locked out.

THE COURT: The union went ahead and held the hearing and ruled; is that it?

MR. HALL: That's it.

THE COURT: Now it is on appeal?

MR. HALL: That's right. It has been on appeal.

THE COURT: The Appeal Committee has not acted?

MR. HALL: That's right.

THE COURT: On the issue of bias of the present

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Appeal Board, is that what you were on?

MR. HALL: That's what I am getting at. Since the suggestion was raised that maybe now they might go ahead and do something different, what I am suggesting to your Honor is that the members of that Appeal Committee have already prejudged the case and are biased against the plaintiffs.

MR. ZIMNY: Such a claim has never been made until this moment. It is reflected neither in the complaint nor any of the moving papers.

THE COURT: You have to show me that in the complaint.

MR. HALL: It has never been suggested that there ought to be a trial now until last Thursday Mr. Zimny said that perhaps the trial could be had now by the Appeal Committee. I suggest the Appeal Committee, at this point, is incapable of trying these plaintiffs on these charges.

MR. ZIMNY: This is an obvious afterthought. We were talking about an incomplete hearing before the Appeal Committee. That claim was never made before.

THE COURT: Let me refresh my recollection as to what relief you seek on this motion for a preliminary injunction.

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MR. HALL: I want to enjoin Local 10 from carrying out punishment any further, the punishment that was imposed on these plaintiffs last January, and, in particular, to protect their rights as members of the union.

THE COURT: I thought you wanted that pending the outcome of the appeal.

MR. HALL: No, no. Pending the outcome of the trial in this action.

THE COURT: I see.

MR. HALL: The statute provides that this Court may require us to exhaust remedies not exceeding four months. We have pursued our remedies much more than four months before we brought this action even though the punishment had already gone into force. We have already --

THE COURT: That's all I wanted to know.

BY MR. HALL:

Q I have handed you a decision of the Appeal Committee and a covering letter dated April 28th. Are you familiar with that decision?

MR. ZIMNY: April 28, 1975.

I object on the same ground already indicated. He is going back into cases which are not before you.

THE COURT: I don't see that at the moment,

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Mr. Hall. The Appeal Board vacated the result in that case, did it not?

MR. HALL: That's what the decision is.

THE COURT: I don't see how that is relevant here.

MR. HALL: The question was raised last Thursday as to whether a hearing and, in fact, a trial, because Mr Zimny insists there was going tc be a trial de novo, could be had by the Appeal Committee, and what I am saying is there could be no fair trial by this Appeal Committee. This Appeal Committee has prejudged the plaintiffs quilty on the charges.

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Q I think you can establish that through showing that the membership was the same on both of these appeals.

MR.ZIMNY: That claim has never been made before. It is an obvious afterthought, and it is clear they want no trial.

MR. HALL: Certainly. I want no trial.

MR.ZIMNY: You want no trial under any circumstances. He filed this suit. He waited until July to file the suit. He filed a motion for a temporary injunction. He responded to a motion for summary judgment asking for his own motion for summary judgment, and not one word of bias by the appeal board in any of those papers until this question. This comes after. We are inquiring into a trial by the appeal board, it never came before. It is obvious that he wants no trial under any circumstances.

THE COURT: We can resolve it this way: Have you raised in these papers any claim that the present appeal board is biased?

MR. HALL: The question would have no relevance to the papers.

THE COURT: Answer the question.

MR. HALL: No, I have not.

THE COURT: We are not going into that. You

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didn't raise that.

MR. HALL: Let me go over.

THE COURT: Moreover, this is the same appeal board that they catered a price determination --

MR. HALL: If they catered one and affirmed the other.

THE COURT: The most recent conviction?

MR. HALL: There were three trials and punishments of these plaintiffs.

THE COURT: I thought two of them resulted in vacatings by the appeal board and this third one ordered.

MR. HALL: No. May I explain?

THE COURT: Yes.

MR. HALL: The first one resulted in the appeal committee setting the decision aside. In its decision it went outof its way to say the plaintiffs are guilty but, nevertheless, they are setting it aside. Then the plaintiffs were tried a second time.

THE COURT: Do you have those?

MR. HALL: That decision is the one handed to the witness.

THE COURT: That's what the committee said?

MR. HALL: Yes.

THE COURT: That's the same appeal committee?

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MR. HALL: Yes.

The second appeal, which was last summer, the appeal committee affirmed the punishment andthen, a month later, we brought suit, and the month after that we brought suit the general executive board, which is,as I said,not an appeal body but is a punishment body and has power to set aside decisions on its own motion, it did so. This is after we were already were in court.

Of course the defendants used that in their papers. In other words, we have two decisions by the appeal committee, one of which says the evidence is sufficient to find these fellows guilty, nevertheless we set the decision aside. That's the first one.

The second one says we find nothing wrong and affirm.

THE COURT: That's the appeal board?

MR. HALL: Yes. There has been confusion because Mr.Zimny refers to the appeal committee as if it were the general executive board.

MR. ZIMNY: I do not.

MR. HALL: Let me talk.

MR. ZIMNY: I'm sorry.

MR. HALL: So when it makes a ruling he can interpret that as being the ruling of the general executive

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board. In fact, none of the rulings he has been depending on were made by the general executive board. The only one made by the general executive board was the decision made after the first suit was brought, the one in October of last year, the one setting aside the second conviction, and in that decision, which was read to your Honor, the general executive board simply said that as far as records of the hearing were concerned, it directed the secretary to make the official record. It said nothing whatever about whether anybody else could make any record for his own purpose. Certainly there was nothing in it to suggest that anybody was barred from making his own record. It is only the appeal committee which has said otherwise, and now, of course, Mr. Chaiken has submitted an affidavit which is tailored to the defendants' position and it says he interprets the constitution as Mr. Zimny does.

THE COURT: To get back to the original point, you say you don't want the hearing before the present appeal committee because that present appeal committee has previously sat on appeal and said there is sufficient evidence to find the plaintiffs guilty of charges? Is that it?

MR. HALL: We have appealed to the appeal committee because we are required to. We have been pursuing our remedies in good faith. The suggestion was made

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by Mr. Zimny in effect we could make up for all of this trouble in the past by holding a whole new trial by the appeal committee, and I say that would be no fair trial because this appeal committee is not in a position to try these plaintiffs on these charges having prejudged the case.

THE COURT: And they prejudged it how?

MR. HALL: In their two previous decisions.

THE COURT: You have copies of those decisions?

MR. HALL: Yes.

MR. HALL: Where are they?

MR. HALL: One of them I have handed to the witness.

THE COURT: Produce both of them.

(Plaintiffs' Exhibits A and B were marked for identification.)

THE COURT: Tell me what A and B represent.

MR. HALL: A is the first decision of the appeal committee.

THE COURT: Those are going to be received in evidence.

Is there any objection?

MR. ZIMNY: They are in the papers. They are attached to the papers. They are in the record.

THE COURT: I didn't realize that. We will

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received them in evidence so we can discuss them at this point.

(Plaintiffs' Exhibits A and B were received in evidence.)

MR. SCHLESINGER: They are in evidence in context but they are being received out of context.

THE COURT: That objection is overruled.

With respect to Exhibits A and B they are now received.

I want you to read from those exhibits, Mr. Hall, what your statement is that the present appeal committee has prejudged the case. Take them one at a time and answer the question. Don't give any explanation.

MR. HALL: As to the first, the first sentence reads as follows:

On the evidence in the record the Local 10 Executive Board could properly have found the accused guilty as charged byt an error conducted in the conduct of the hearing compels us to order a rehearing of the charges.

It then goes on to explain that some people sat on the executive board on the trial body who should not have sat on the trial body.

THE COURT: Go to the next one.

That was A?

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MR. HALL: Yes.

THE COURT: Go to B.

MR. HALL: Paragraph 6:

The appeallants' bear statement denying the charges stands refuted by the overwhelming weight by the evidence of their guilt. For whatever reasons they chose a procedure whereby they deny the charging party and the trial body an opportunity to subject their denials to examination. They therefore cannot complain when the testimony of seven witnesses affirming their guilt is accepted over their unsubstantiated denial.

The overwhelming weight of the evidence of their guilty, your Honor --

THE COURT: That's the second appeal, the present committee?

MR. HALL: Of the appeal committee. Who is present, I don't know. It is the appeal committee obviously minus one or two people.

THE COURT: We spent a lot of time on a point which you have now changed. Your original statement was that the plaintffs could not get a fair hearing de novo beforethe present appeal board because that board has prejudged the case.

Now you are telling me you don't know who

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sat on the present appeal committee from whose minutes you have just read.

(Continued on next page.)

MR. HALL: My problem is this: Mr. Gross has testified that sometimes he sits on the appeal committee and sometimes he is absent. This decision does not indicate who sat on the trial appeal committee in these instances. Perhaps I can find out from my clients who have some material who was on the appeal committee in each instance.

THE COURT: Ask this witness if he was there and who was present.

BY MR. HALL:

Q Mr. Gross, if you remember, what persons sat on the appeal committee at the first appeal taken by these defendants?

THE WITNESS: May I make a statement of my own?

THE COURT: You answer the question.

THE WITNESS: I cannot.

THE COURT: You were not there?

THE WITNESS: I may have been there. I don't know.

THE COURT: You don't remember?

THE WITNESS: If Mr. Hall wants me to be his witness I will be glad to be his witness.

THE COURT: You are.

THE WITNESS: Give me a list of his dates. I will consult my calendar and tell him whether I was there

or not.

THE COURT: You don't remember?

THE WITNESS: I don't remember.

THE COURT: How about the second?

THE WITNESS: I don't remember.

THE COURT: He does not remember.

Q You have said there were 11 members of the appeal committee?

A I don't know how many. I have not counted them recently. I am not prepared for such cross-examination.

THE COURT: Do you know whether the membership of these committees --

MR. ZIMNY: I don't know. That's not involved in this case. It is involved in another case to which I am not a party.

Furthermore, can I make a few remarks --

THE COURT: Mr. Schlesinger, do you know whether the membership of these committees was the same?

MR. SCHLESINGER: I have no idea, your Honor. I have nothing to do with the ILGWU. I do not represent them. I am not their counsel. I do not sit at their meetings. I give them no advice. I know nothing about them.

THE COURT: You have to move on to another point. We are only going to be five more minutes at this hearing.

That point of yours has not been established so far by the evidence, that the present appeal committee is biased.

Q Mr. Gross, can you tell us how many members sit on the appeal committee hearing?

A As many as come to the meeting.

Please don't ask me questions I am not prepared to answer.

Q Mr. Gross, when was the last time you sat on an appeal committee?

A We had a meeting yesterday.

Q You sat yesterday?

A Yes.

Q How many people were there?

A Yesterday seven or eight.

Q Had those seven or eight people sat on previous committee hearings?

A They may have been the same and they may have been different members.

I believe it is unfair to ask me questions I was not prepared to answer.

THE COURT: No, no. You cannot take that position. You are directed to answer. Don't tell us you came here prepared to answer only one thing. If the question is relevant to this proceeding you have to answer. If you can't remember

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something, that's one thing; but don't say, "I don't want to answer it."

A (Continuing) Yesterday seven or eight were present. Three I know were absent for good re[illegible]s. At other times these may have been there and some others absent. I do not remember these things.

Q How many members are there on the general executive board?

A 23.

Q Is every member of the general executive board a member of the appeal committee?

A No, sir.

Q How many members of the general executive board are members of the appeal committee?

A I told you before, I think eleven but I don't know if that's so or not. There may have been nine.

Q Take those nine or eleven; are they the only people who sit on the appeal committee hearings?

A Yes, they are.

Q So whenever an appeal committee meeting is held some among those nine sit.

A They have other things to do.

Q How many sit at any one appeal committee hearing?

A Generally a majority of the committee.

pgcg 5

Q More than six, right?

A Probably about six or so, at least.

MR. ZIMNY: May I be heard briefly?

THE COURT: We cannot have this. The witness is on examination. We have to let the examination conclude. You can cross-examine him and at the end of all the evidence I will hear argument. That's the way we conduct a trial.

MR. ZIMNY: I want to object to the entire line for what I think are proper and fundamental reasons.

THE COURT: All right.

MR. ZIMNY: There were apparently two complete appeal committee hearings involved in the prior trial and one incomplete one involved in this trial. You were told and Mr. Hall questioned concerning the conduct of the appeal committee after trial number one below. He cited a portion of the decision of that appeal committee which he claimed indicated bias.

You will notice, and he has not claimed otherwise, that there was no claim of bias made to the appeal committee which sat on the second hearing, though that followed the first decision. There has been no claim --

THE COURT: What is your objection?

MR. ZIMNY: This entire line is outside the scope. It is not encompassed by it. It is something that

arises now for the first time. It is outside the scope of the issues in the pleadings.

THE COURT: I ruled just a few minutes ago, if you will listen, that he attempted to establish through this witness that the committee was biased, and he failed to do so by failing to show the composition of the committee was the same. Where were you when I made that ruling?

MR. ZIMNY: But he continues to ask about the same line.

THE COURT: He is asking how many were on the committee. That's different.

MR. ZIMNY: To what purpose is that question being asked? If it is different I will not object.

THE COURT: It is a background fact in this case as to how many were on the committee.

MR. ZIMNY: Background for what purpose?

THE COURT: So I can decide the facts in this case. When I write these findings I can say that the committee consists of eleven people or forty.

MR. ZIMNY: I will be glad to supply you with that information. It is an uncontroverted fact.

THE COURT: Do you have something else?

MR. HALL: I want to ask him some names here.

Q Is Mr. Edward Kramer a member?

THE COURT: We can shorten this. You can give him the names of the people who sat on the first two committees and the ones on the present.

MR. ZIMNY: I can give him the names of the present one. They are reflected in an exhibit attached to Mr. Lipsig's second affidavit. That consists of the minutes --

THE COURT: No, no. You say the present committee is listed; is that it?

MR. ZIMNY: Yes.

THE COURT: You give him the names.

MR. ZIMNY: He has that.

THE COURT: Of the first two committees.

MR. ZIMNY: I will have to get that for him.

THE COURT: That's what I am saying. Get it for him.

What else do you have? We are going to recess now. If it is of any length we will take it up at another time.

MR. HALL: Let me say I brought plaintiffs with me and I brought the plaintiff Rosario with me yesterday expecting an evidentiary hearing.

THE COURT: It is now 10 minutes after six, Mr. Hall. The reporter and I have been here since 9:30. I am not going to hear anybody else tonight. We are going to

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recess unless you have a brief matter which will dispose of this matter so he doesn't have to come back.

MR. HALL: I wanted to make an inquiry to this effect. I believe I started off last time, last Thursday or Wednesday, by telling the court I brought Mr. Rosario with me available in case the court expected to go ahead with an evidentiary hearing. Mr. Rosario would have testified as to --

MR. SCHLESINGER: I object to that.

THE COURT: I cannot hear it now. I have to recess. You will have an opportunity to put him on. I cannot stay here forever.

B.7 MR. HALL: Perhaps I can list a number of names and ask Mr. Gross whether these are among the nine or eleven people who comprise the appeal committee.

MR. ZIMNY: I will supply the names, your Honor.

THE COURT: I just told him to give you the names to shorten this. We are going to recess this until 4:15 on Friday. You can come back at that time.

Are you through with this witness or does anyone want him further?

MR. HALL: Could I have a minute?

(Pause.)

MR. SCHLESINGER: May I make a note that I have

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not said a word.

THE COURT: The record will reflect that.

MR. HALL: One question.

BY MR. HALL:

Q Is it a fact, Mr. Gross, that on occasion the appeal committee has itself hired a stenographer to take down the minutes of the hearing?

A I do not know that as a fact, no.

Q When you say "no," you mean you do not know?

A I do not know it is a fact.

THE COURT: We are going to recess until 4:15 on Friday.

MR. SCHLESINGER: Your Honor, this has nothing to do with the case, but it has to do with the reporter and --

THE COURT: Do you want the witness to come back Friday?

MR. HALL: No.

MR. ZIMNY: The answer is no.

THE COURT: You want the witness back?

MR. SCHLESINGER: No.

MR. ZIMNY: Are we going to have an evidentiary hearing?

THE COURT: We are having an evidentiary hearing now which will continue on Friday. I want to impress upon

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you -- I said it the last time -- when you have a motion for a preliminary injunction on before a court and one party says the flag is green and the other says it is black, we have to have witnesses. That's what we are doing here. I don't know why it is so novel for you that we are calling witnesses so that I can develop a record here and make findings of fact instead of listening to lawyers trade charges and change their statements from one minute to another. That's what we are doing. We are trying to make a record here based on the testimony of sworn witnesses.

Is that clear?

If you have any witnesses bring them Friday. That applies to both sides in this case, and I don't want to hear any more argument, charges, and counter-charges. We want testimony, evidence, so that I can make findings of fact either granting or denying this preliminary injunction.

Is that clear?

MR. HALL: Yes, your Honor.

MR. SCHLESINGER: One question, your Honor: Does that apply also to the trial committee or are you only on the appeal committee? I am referring to the trial committee that rendered the decision, Local 10.

THE COURT: Does what apply?

MR. SCHLESINGER: What you have just been saying.

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THE COURT: They are a defendant here. You represent them. It applies to them, yes.

MR. ZIMNY: May I point out that you have many, many documents before you in the papers, already official documents, which dispose of many, many facts.

THE COURT: You can point those out in your proposed findings of fact and conclusions of law. If you can stipulate with the plaintiffs it will save a lot of time, that there are certain facts that are not disputed.

(Time noted: 6:15 p. m.)

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Exhibit 9

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JA 141

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

TOMAS ROSARIO, OVIDIO VEGA and RAY CABEL,

Plaintiffs,

-against-

76 Civ. 3204

AMALGAMATED LADIES GARMET CUTTERS UNION, LOCAL 10, of ILGWU and ILGWU, AFL-CIO,

Defendants.

Before:

HON. CONSTANCE B. MOTLEY,

District Judge

New York, New York

September 17, 1976
Room 1106 - 5:15 p.m.

APPEARANCES

BURTON H. HALL, Esq.,
Attorneys for Plaintiffs

EMIL SCHLESINGER, Esq.,
Attorney for ALGCU

MAX ZIMNY, Esq.,
Attorney for ILGWU

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THE COURT: Mr. Hall, do you have anything further?

MR. HALL: Your Honor, I am here with three witnesses, and if your Honor desires to have that I am willing to proceed.

THE COURT: What are these witnesses going to testify about?

MR. HALL: Your Honor, The three affiants, Mr. Rosario, Mr. Cabel and Mr. Spitzer,they will testify instances as to what is contained in their affidavits. Now, much of what is contained in there is not disputed or at least not materially disputed.

Some of the matters --

THE COURT: Well, if it is not disputed why are they going to testify about it? You have to bear in mind, Mr. Hall, that this is a motion for preliminary injunction and not a full dress trial with witnesses in a courtroom.

They are not here on a trial of the merits.

MR. HALL: I understand, your Honor.

THE COURT: Short and to the point. You have to bear in mind the relief you are seeking at the moment.

What are they going to testify to that we don't have here already?

MR. HALL: Primarily to the two sessions

December 18, 1975 and the January 8, 1976, primarily the second of those, to their appeal, and to the hearing of April 8th, '76 on appeal.

Now, as to the trial on January 8, '76, two matters are disputed atleast in the papers, although Mr. Schlesinger said I believe at an hour earlier hearing that nothing is disputed and perhaps that means he withdraws his position on these two matters, but the first dispute as I understood it was that as to what the chairman had said as he led the trial committee out of the room. We stated, and we will produce a transcript taken from our own tape recorder as well as the tape recorder itself, that what the trial chairman said was "We will hold the trial without you."

And everything else he said indicated that they were barred regardless. Well, the defendants and their affiants, have suggested that he said something else which held out an olive branch, an invitation to the defendants under some other condition to attend the trial. The other fact in substantial dispute is whether the room to which he led them was locked.

Now, in our affidavits we pointed out that the three plaintiffs and the two --

THE COURT: Whether the room to which the

chairman led the plaintiffs was locked?

MR. HALL: Excuse me, led the trial committee.

THE COURT: Well, it is I think undisputed that the trial committee refused to let the plaintiffs come into the last hearing because they insisted on bringing a tape recorder. Is that so?

MR. HALL: That is right, Judge.

THE COURT: Is that defense counsel --

MR. SCHLESINGER: That is correct. And that they had been warned --

THE COURT: So they were excluded from the meeting?

MR. SCHLESINGER: And that they had been warned about it in advance.

MR. HALL: They attempted to submit a further statement --

THE COURT: That is one fact which is not disputed. Let's try to get the undisputed facts before us so at least we don't spend the next three weeks trying this.

The second undisputed fact as I see it is that the plaintiffs could not have brought a stenographer to the meeting. There is some contention that they didn't ask for it. Is that right?

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MR. HALL: But they had been repeatedly told in the past that they couldn't bring a stenographer anyway.

MR. SCHLESINGER: That is not so, Judge.

THE COURT: Let me ask you this.

You don't dispute that they didn't ask to bring --

MR. HALL: That's --

THE COURT: Just answer the question.

Do you dispute they didn't ask to bring the stenographer?

MR. HALL: Well, may I answer this way: That I indicated their readiness to bring a stenographer in the statement written --

THE COURT: That's the second. That's the next point. Try to listen.

MR. HALL: Yes.

THE COURT: And try to answer the questions.

MR. HALL: They did not specifically say that they intended to bring one.

THE COURT: All right. Now, I think it is clear from what we heard the other day even if they had asked they would not have been allowed to bring a stenographer.

MR. SCHLESINGER: Public stenographer.

THE COURT: Because the testimony was that if

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the Court directed the plaintiff have a stenographer in this case it would be followed.

MR. SCHLESINGER: Your Honor, may I --

THE COURT: So it seems clear to me that even if they had asked they would have not been permitted to bring a stenographer.

MR. SCHLESINGER: Your Honor, may I correct that?

THE COURT: Yes.

MR. SCHLESINGER: The question was whether or not they would be permitted to have a public stenographer and not a court reporter, that question was not raised. We would not permit a public stenographer, your Honor.

THE COURT: I don't understand that. What other kind of stenographer is there?

MR. SCHLESINGER: There's a court reporter, one that is certified by the Southern District of New York, by the clerk of the Southern District. Any girl could come out and say she is a public stenographer. That doesn't make her a competent stenographer, but a stenographer recognized by this court --

THE COURT: Let me ask you this: It is also clear that whatever the plaintiff wanted to bring it was at his own expense,isn't that so?

MR. SCHLESINGER: That's so.

THE COURT: All right, that is not disputed, is it?

MR. SCHLESINGER: That is not disputed.

THE COURT: But I thought from what we heard the other day that it was clear that the plaintiff did not have the right to bring a tape recorder, stenographer of any kind or any other kind of reporting device in any way, isn't that so?

MR. ZIMNY: Recording device, yes.

THE COURT: Or any reporter of any kind, whatever you call it.

MR. ZIMNY: As a matter of right under the constitution. Can I say something --

THE COURT: One thing at a time. We cannot get things clear here. Every time I try to get the undisputed facts somebody wants to make a statement or argue about it. I am trying to find out what facts are not in dispute, and it seems to me that it is not in dispute that the plaintff wanted to bring something so he could make his own record and that he would not have been allowed to do so. Isn't that so?

MR. ZIMNY: The plaintiff, the something that the plaintiff offered was a tape recorder.

THE COURT: Well, whatever he offered.

MR. ZIMNY: And he was not allowed to do so either at the trial or at the appeal level, that's true.

THE COURT: What would everybody be allowed to do to make his own record?

MR. ZIMNY: He may have been allowed to bring a court reporter under the circumstances which I mentioned --

THE COURT: That's where we started the other day and I ordered you to bring somebody here --

MR. ZIMNY: And I did.

THE COURT: -- who could tell us.

Now you are telling me he may have been. As I understood the testimony he would not have been but if the Court would order it for this hearing in this case it would be allowed. That was the testimony the other day. I have forgotten the man's name. What was his name?

MR. ZIMNY: Yes, that's correct, Mr. Gross.

THE COURT: What are you saying now?

MR. ZIMNY: May I add one thing in an effort to try to cut through and perhaps help solve this problem. I reviewed the transcript of the last hearing, and Mr. Hall for the first time raised bias by the GEB appeal committee, you may remember.

THE COURT: Well, this is something entirely different.

MR. ZIMNY: No, it is not different.

THE COURT: And I ruled in your favor the last time that he had not established that and I wouldn't hear it.

MR. ZIMNY: I wanted to make an offer --

THE COURT: I am not going to hear it.

Now, I am trying to decide what facts you have to hear this afternoon at 5:20 in the afternoon. Can we get to that?

MR. ZIMNY: I am trying to make an offer of settlement.

THE COURT: All right, I will hear an offer of settlement.

MR. ZIMNY: As a result of my review of the transcript,I discussed it with the president of the union who authorized me to say that if it would solve the matter and in line with your suggestion he would appoint an appeal committee consisting of vice presidents who were not involved in either of the first two hearings and that's where the claim of bias comes in, to hear the case under the conditions set forth in his affidavit to you beginning at page 5 which Mr. Gross testified about.

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THE COURT: What are those conditions?

MR. ZIMMER: Those conditions are that as in the Kiepura case this does not establish a precedent. The stenographer should be a court stenographer certified by the clerk of the court. Copies of the transcript should be delivered to the chairman of the GEB Appeal Committee, and to the charging party.

If plaintiffs want an early decision they should order expedited transcripts. The expenses of court reporters have to be borne as in the Kiepura case by plaintiffs, and the appeal should be a hearing de novo by the GEB appeal committee to take place at the earliest possible date. The charging party and the accused shall have the right to be represented by lay counsel in the manner provided in the constitution.

All parties have a right to present whatever witnesses they desire and to give testimony orally or in writing, as is customary in ILGWU disciplinary proceedings they have the right to confront and cross examine witnesses and to make opening and closing statements.

Members of the GEB appeal committee have the right to question any witnesses. In the meantime the decision rendered by the trial committee remains in full force and effect as provided in the ILG constitution.

MR. HALL: Your Honor, we have --

MR. ZIMNY: In addition, the President goes on to say that the minutes of the trials, those held in February and May, 1975 and that includes the minutes of the GEB appeal committee hearing on April 28th and July 22, 1975, need not be given to anyone because they could be highly prejudicial.

Moreover, they're not needed for a defense. Rosario, Vega and Cabel have minutes of the hearings held by the trial committee on December 18, '75 and January 8, '76 and the decision rendered by it on January 29, 1976. I might add they also have the minutes of the aborted GEB committee appeal hearing on April 8, 1976.

THE COURT: They have all the prior minutes?

MR. ZIMNY: All the prior minutes they have.

THE COURT: Of all the hearings?

MR. ZIMNY: Not of all the hearings of the current hearings, the hearings which have taken place since the GEB ordered a new trial before a new trial committee. The trial of appellate minutes are in their possession. Now he goes on to say that if these plaintiffs should now request thetestimony of the charging party, Abe Dolgen and his witnesses at the two trials which were held in February and May, '75 for the purpose of confronting them

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with their previous testimony, a request which they have heretofore not made, the request should be granted. The appeal committee will make its decision as soon as reasonably possible after receipt of the transcript of the hearing from the court repoter, and notices of the decision will be sent to the plaintiffs as well as to all other interested parties as soon as it is rendered.

MR. HALL: Your Honor, we have exhausted our remedies now for about, for more than eight months since the trial in the local union in January. We feel we are entitled to come to court and I don't see Mr. Zimny's late invention of a new appeal that we have to exhaust as being appropriate. It does seem to me that the denials of right in this trial last January are many and substantial, and that we are entitled to have that punishment set aside.

Now, if the union then wants to try them again, and if there's no obstruction to that, they can try them again but we think we are entitled to have this punishment set aside.

THE COURT: If this instant punishment is set aside by the Court do you feel that the union has a right to try them again?

MR. HALL: Well, I would challenge it because

we have now been tried three times and punished three times. These three members have been suspended from many or most of their union rights as far as participation is concerned since February I believe of 1975, twice on decisions which the union itself admits are invalid.

In one of those decisions the charging party sat as the chairman of the trial committee.

MR. SCHLESINGER: That is not true.

THE COURT: We are not on that right now, but I thought that you were complaining of the fact that the hearing was not fair and you could not demonstrate it because you didn't have your own transcript of the hearing.

MR. HALL: I have transcripts taken insofar as we taped them.

THE COURT: Taped them?

MR. HALL: Well, we had tape recorders present at the last two hearings as you know.

THE COURT: Now I am really lost now. I thought you were barred from --

MR. HALL: Excuse me, you are quite right, from that part of the hearing, the bulk, almost the entirety of the hearing in January 8th, what took place in the --

MR. SCHLESINGER: I don't know what he's saying, your Honor, I don't understand.

MR. HALL: I am sorry.

THE COURT: Yes, speak that way.

MR. HALL: In our request for those minutes especially of the earlier trials what we were seeking primarily was the official record of the testimony of the people who testified against us, as the union's official record because it is quite contrary to what those people actually testified to.

For example, at the first trial, Mr. Dolgen testified --

THE COURT: Well, let me ask you this, Mr. Hall, if the union should give them a new hearing with an appeal committee consisting of persons who have not previously sat on this, and if they permit the plaintiffs to bring an official court reporter of some kind, and if the punishment is set aside pending the outcome of that hearing would that --

MR. HALL: No, your Honor. -- pending the outcome of that hearing. I think really that we are entitled to have the punishment set aside period. And then following --

THE COURT: You cannot get a final determination on that until there's a trial, isn't that so?

MR. HALL: I think though enough has been shown and can be shown this afternoon to show that these

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plaintiffs were denied a full hearing. Not only they for instance were barred from the trial but somewhere the two lay counsel who had nothing to do with tape recorders, and --

MR. SCHLESINGZR: Your Honor, may I be heard? I have sat quietly for the last --

THE COURT: All right, you can be heard.

MR. SCHLESINGER: Now, Mr. Hall has made a great many statements here, your Honor which have no basis in fact. When he got up to answer me, he didn't answer me but he made a lot of other statements which are unproven fact. When we get up here and discussed this question we ordered the record of this. He talked about a court reporter, that's on pages 35, 36 and 37 of the report. Then all of a sudden we get into the discussion of public stenographers. Then he got -nto a discussion of a lot of matters that took place, that have never been discussed in the papers, made a lot of statements that absolutely are untrue, and I want to be the one to deny each and every one of the statements that he made. Now, he does not want these plaintiffs to be tried in this case, and there is no way that you can help him in that situation. He just doesn't want a trial. I have sat with Mr. Zimny. Mr. Zimny has sat with the president. We have tried to work this thing out so

that it would be something that the Court would not have to bother with. With all the papers for which I have personally at my age, and after 53 years of practice, given my heart and my soul, and my swear and my tears.

Your Honor, I thknk it is time that there ought to be some way of solving this problem,and I don't think he wants a trial.

Now I want to say to your Honor that we will not, Local 10, will not vacate the decision of the trial committee. That was a fair trial. These people would not stand for a fair trial. They would not obey the rulings of the trial committee. They wanted to establish their own rules and what they did was unlawful, and illegal so far as I am concerned. And when the committee acted it acted properly. As a matter of fact, it even failed to sustain one of the charges, so fair was it. And I will not give up that right because there is nothing that will satify Mr. Hall and if he wants an evidentiary hearing I have brought the witnesses here.

Let's have an evidentiary hearing.

THE COURT: Well, I am trying to find out what we were are going to hear.

MR. SCHLESINGER: You are going to hear from us that he had a fair trial. You are going to hear from us

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that I wrote to Mr. Hall and told him the reasons why he wasn't entitled to previous minutes.

You are going to hear from me that these people were asked to take out a tape recorder, which they brought with them. They had been advised before that they couldn't use a tape recorder. You are going to hear from me that they're cheaters and liars. That when they said they weren't having a tape recorder, they did record. You are going to hear from me that Mr. Spitzer will give you a tape recording which is absolutely doctored, and tailored in the garment industry language to fit his needs. We are going to show that the minutes of meetings are honest and fair, that these cutters whom I brought from the shops are decent, honest men who have done their job. They are not controlled. They are not manipulated. They were not handpicked. The doors were not locked. Nobody opened doors with any keys. We are going to prove that these are honest people and that these people, Mr. Tomas Rosario, and Mr. Spitzer want to destroy this union and we aren't going to let them do it. That's what we are going to prove.

MR. HALL: Your Honor, the plaintiffs are being asked to submit to a trial by the political enemies, as I think you could tell from Mr. Schlesinger's speech.

MR. SCHLESINGER: I am not political enemies of anybody, your Honor.

MR. HALL: Will you be quiet?

MR. SCHLESINGER: Please don't talk to me that way, sir, I am older than you.

MR. WALL: We cannot accept that as a settlement of this case because these three plaintiffs --

THE COURT: What is the meeting that is coming up Monday?

MR. SCHLESINGER: Yes, there's a membership meeting.

MR. HALL: It is the quarterly membership meeting.

MR. SCHLESINGER: There's a membership meeting. I can speak to that. I happen to represent the local. It is a membership meeting that will take up routine business, nothing else, nothing of any importance.

MR. HALL: Let me answer; there are only four such meetings a year. The plaintiffs, of course, have been excluded, attended the first meeting this year, although they were not allowed to participate. The second meeting, of course, they were excluded from under the terms of the decision. Since there are only four meetings, this is the only opportunity that the plaintiffs

had to meet, to address their fellow members at a membership meeting. That opportunity is a very great one especially so since the elections for local officers are coming up the beginning of next year and these three plaintiffs as they have in the past intend to run for office.

MR. SCHLESINGER: They're not going to be barred from running for office. They are not going to be barred from attending those membership meetings, your Honor.

THE COURT: Are they barred from attending the meeting on Monday?

MR. SCHLESINGER: Yes.

MR. HALL: I think, your Honor, that they should be permitted to attend.

MR. SCHLESINGER: No, we will not permit them to do it, your Honor. Let us have an evidentiary hearing.

MR. HALL: As I pointed out that evening aside from all our other arguments, the punishment that the committee chose to --

THE COURT: I started to enumerate the facts which were not in dispute and we will continue with that. As I said earlier, it is not in dispute that the defendants could not bring a tape recorder, that they could not bring a stenographer of any description, whether it is public

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or court stenographer. And it is not disputed that the plaintiffs wanted to bring a stenographer or recorder at their own expense, that is they weren't asking the union, is that right?

MR. HALL: That is right.

MR. SCHLESINGER: That is wrong, your Honor. It is disputed. That is disputed. They never asked for that either.

THE COURT: We are asking about whether the plaintiff is claiming that the union ought to bear the expenses of his recording.

MR. SCHLESINGER: They never asked.

THE COURT: I am not on whether they asked for it. I am on whether they're claiming that the union has to pay for it. They're not, right?

MR. HALL: No.

THE COURT: They want to be able to go to the hearing and make their own record through some device of some kind, is that it?

MR. HALL: Well, we did that, we now protest the punishment as unlawful. Yes, we offered the trial committee --

THE COURT: Well, you contest the punishment as unlawful on the grounds they didn't have a fair hearing,

in that they were not permitted to make their own record.

MR. HALL: And we are barred from the hearing as well.

THE COURT: And you werebarred from the hearing. But the hearing is not concluded in that the appeal board didn't take any action.

MR. HALL: We pursued for four months as best we could. Incidentally, on this appeal committee, there's a lot of talk --

THE COURT: Wait a minute. They were excluded from the trial itself.

MR. HALL: That is right.

THE COURT: And then you are appealing it and again you are excluded, is that it?

MR. ZIMNY: No, no, no, it is not so, your Honor.

MR. HALL: May I answer her Honor's question, Mr. Zimny. The appeal hearing was simply stopped short by Mr. Kramer, the chairman, who stated that there was going to be an official record, and no other record of any kind would be permitted. In fact, Mr. Lipsig, the secretary of that committee said the same thing in a letter, and that has been the position both local and the international allalong as regards that, namely, no record at all,

without even limiting, without even discussing ways of making a record, no other record at all except the official jottings that the secretary of the trial or appeal committee takes down.

MR. ZIMNY: That's a disputed fact, your Honor. I don't want to get into an argument with him. It is not going to advance anything. We will produce evidence to the contrary.

MR. HALL: Well, Mr. Zimny has already introduced the letter of Mr. Lipsig of May 28, 1976, which I believe says exactly that. Now, we will produce a transcript of the appeal hearing in which Mr. Kramer is saying substantially the same thing.

THE COURT: What does he say?

MR. HALL: Saying that there would be an official record taken by the secretary of the committee and that's the only record that anybody can take.

THE COURT: I gather that's not --

MR. ZIMNY: That's not what he said. The minutes --

THE COURT: Just a minute. There will be an official record taken by the secretary, isn't that so, Mr. Zimny.

MR. ZIMNY: Yes, Mr. Kramer said that the

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minutes are attached to affidavits. Mr. Kramer said that the secretary takes the official minutes which are filed and then made available and can be made subject to motio for correction. He said at the trial a tape recorder would not be permitted. He said no request has ever been made for a stenographer. And consequently in correspondence when these plaintiffs for the first time raised the question of taking their own notes the secretary, Mr. Lipsig, who is here to testify, wrote them and said, no one has ever denied or intended denying you the right to make your own notes.

MR. HALL: On that late offer, between the participants themselves, they were not allowed, the instruction was clear they were not allowed to bring any court reporter to make such notes. They're to make them themself.

THE COURT: Yes, I was trying to get to that. You, of course, are not denying the union has a right to have an official secretary thereto take the minutes?

MR. HALL: Oh, certainly.

THE COURT: All right. All you want is to have the plaintiff at his own expense make a record, is that it?

MR. HALL: That's what I am saying.

THE COURT: Whether by tape recorder, public stenographer, anything else?

MR. HALL: I think the most inexpensive would be most appropriate. We say by any means whatever. Whatever means he chooses.

MR. SCHLESINGER: Your Honor --

THE COURT: No, just a moment, let me read this.

All right. With respect to this the Court's going to rule on the motion for preliminary injunction at this time.

MR. SCHLESINGER: Before you do so may I hand your Honor two papers to look at?

THE COURT: Yes.

MR. SCHLESINGER: These two papers represent the statements signed, photostatic copies -- I have the originals of February 25th -- before the first trial. I marked out the particular paragraph I wanted your Honor to read, in which they're asking for nothing but a tape recorder in both paragraphs.

MR. HALL: That's 1975.

THE COURT: Suppose we mark these as Defendants' Exhibits.

MR. SCHLESINGER: Then I want to call your at-

tention, your Honor, to one paragraph in the Kiepura case which Mr. Hall has cited.

THE COURT: Excuse me just a minute.

(Defendants' Exhibits A and B were marked for identification.)

MR. SCHLESINGER: I have here the original copies of the minutes that were sent to the plaintiffs and all of the enclosures in it. Let me read this, this is from the case of Kiepura, against Local Union 1091, the United Steel Woekrs of America, it is 358 Fed. Supp., 987, and I am reading from page 991:

"Plaintiff offered to supply a court reporter at the hearing at his own expense. We believe that was a reasonable request which should have been granted. The union constitution provides for a four-step appeal procedure up to the international convention and the plaintiff should have been given an opportunity to make his record for this purpose. In view of the remedy now provided by the Labor Management Report and Disclosure Act, a stenographic record of the hearings would have greatly facilitated the Court, since much of the evidence in this case was an attempt to reconstruct what took place at a hearing almost four years ago."

Now I underscore this, "We do not hold that the use of a court report is a necessary element of a 'full and

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fair hearing, but we do hold under the circumstances of this case that the refusal to allow the plaintiffs to supply a court reporter at his own expense was an abuse of discretion which did tend to deprive him of such a hearing."

I have given you the documents, your Honor, to show that they have never asked for any stenographer at all.

THE COURT: All right.

MR. HALL: Your Honor, just a comment, the statement that they submitted on December 18th, which is attached to I think some of defendants' papers, clearly points out that they're not bringing a stenographer with them, because they know the union wouldn't allow it.

MR. SCHLESINGER: That does not state that. That is not in there. That is not the one that I submitted.

MR. HALL: Well, he didn't submit the statement.

THE COURT: I didn't hear what you said because he cut you off. Did you get it, Mr. Reporter?

MR. HALL: Attached to some of the affidavits or one of the affidavits is defendant's statement of December 18, 1975 by which they attempted to submit at that hearing were not allowed to , so they sent in by mail and in that statement defendant stated flatly that the reason

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they're not bringing a stenographer with them is that they know the union wouldn't allow that either and therefore it's pointless to go to the expense when they know that.

THE COURT: All right, I have heard all the lawyers I am going to hear now. I am going to rule on the motion and in view of the fact that it is ten minutes of six, and there is this meeting scheduled for Monday, I am going to make oral findings of act at this time to be later supplemented in writing, and rule on the motions as I said because of the urgency or the time element here which doesn't leave much time to on with this hearing.

As I pointed out, this is a motion for a preliminary injunction and at this j -ture neither party is entitled to a full dress hearing on the merits. The motion filed by the plaintiff in this case requests that this Court issue a preliminary injunction pending the trial and ultimate disposition of this action which would enjoin the defendants from giving force or effect to the disciplinary punishment or suspension in this case which prohibits the plaintiffs from attending membership meetings of the defendant local. This punishment was imposed by a trial committee on or about January 29, 1976.

The plaintiff has a right to appeal the action

of this committee, and that was in progress apparently when this action was commenced.

Now, there are certain facts which the Court finds. The first is that the plaintiffs attempted to bring a tape recorder to trial committee which imposed a punishment in dispute here. They were prevented from doing so. They did not ask for the right to bring a stenographer, but it is clear from the evidence so far that they would not have been permitted to bring a stenographer, whether public stenographer, court stenographer or any other stenographer of their choosing.

The Court also finds that the plaintiffs desired to make a record of the proceedings of the trial committee at their own expense and they are not claiming that the union was required to furnish a court stenographer or public stenographer at the union's expense. They were simply seeking to make a recording or record of the proceedings at their own expense.

It appears that those facts are substantially without dispute here. Now, it seems to me that those facts show that the plaintiffs being barred from the meeting scheduled for Monday night would result in serious irreparable harm to them. That the meeting on Monday night is a quarterly membership meeting and it is

undisputed that the plaintiffs would not be permitted to attend that meeting. There are only four meetings a year and there is an election coming up in January, 1977, and the plaintiffs are obviously active union members. So that applying the first portion of the required test for issuance of a preliminary injunction the Court finds that the plaintiffs would be irreparably injured if they were barred from attending the membership meeting on Monday night.

Now, the Court further finds that there are sufficiently serious questions going to the merits here, that they balance the hardship tipping decidedly in favor of the plaintiffs, which is another test that must be met in order for the plaintiffs to succeed in securing a preliminary injunction in this case.

Now, the Second Circuit's most recent formulation of rule or test for preliminary injunction is set forth in Sonestra International Hotels Corporation v. Wellington Associates, 483 F. 2d 247, 1973, at page 250 and the Court says the following at page 250: This is a '73 case as I have indicated.

"The settled rule is that a preliminary injunction should issue only upon a clear showing of either one, probable success on the merits and possible irreparable

injury, or sufficiently serious questions going to the merits to make them a fair ground for litigation and the balance of hardships tipping decidedly for the party requesting the preliminary relief."

Now, applying those principles here, as I have already indicated, the Court finds that there is, or plaintiff has established the probable success of the merits and possible irreparable injury and has met the second or the alternative test and that is sufficiently serious questioning going to the merits to make them a fair ground for litigation, and the balance of hardships tipping decidedly for the party requesting the preliminary relief. Now, as I have indicated the Court will write out its finding and legal conclusions more explicitly in written form, but these oral findings I think will serve the purpose at this time of setting forth the Court's findings of act and conclusions of law before issuing a preliminary injunction.

All right, thank you.

MR. SCHLESINGER: Your Honor, may I make a statement.

THE COURT: Wait just a moment. The plaintiffs' counsel is directed to submit a proposed order for the Court's signature, at 10 o'clock Monday

morning, setting forth the relief which you requested here, that is, the Court will enjoin the defendants from giving any force or effect to the disciplinary punishment or suspension from attending membership meetings imposed by the trial committee pending the trial and ultimate disposition of this case. All right, thank you, gentlemen.

MR. SCHLESINGER: Your Honor, may I make a statement.

THE COURT: No, I have already ruled on it.

(Time noted: 6:15 p.m.)

CABLE ADDRESS: ILGWU-NEW YORK • PHONE: COLUMBUS 5-7000

Exhibit 10

JA 172

INTERNATIONAL LADIES' GARMENT WORKERS' UNION

AFL-CIO

1710 BROADWAY • NEW YORK, N.Y. 10019

LOUIS STULBERG
PRESIDENT

SOL C. CHAIKIN
GENERAL SECRETARY-TREAS.

WILBUR DANIELS
EXECUTIVE VICE-PRESIDENT

E. HOWARD MOLISANI
FIRST VICE-PRESIDENT

DAVID DUBINSKY
HONORARY PRESIDENT

GENERAL EXECUTIVE BOARD
SHELLEY APPLETON
MORRIS BIALIS
NICHOLAS S. BONANNO
ISRAEL BRESLOW
SIMON BRESNER
ABE DOLGEN
DAVID GINGOLD
SOL GREENE
MURRAY GROSS
SOL HOFFMAN
MATTIE JACKSON
SAM JANIS
EDWARD KRAMER
DOUGLAS LEVIN
HENOCH MENDELSUND
SALVATORE NOTO
JULIUS RAMIREZ
WILLIAM ROSS
EDWARD SCHNEIDER
MATTHEW SCHOENWALD
FREDERICK SIEMS
CORNELIUS WALL

April 28, 1975

TO: Ovidio Vega, 373 E. 188th St., Bronx, N.Y. 10058
Raymond Cabel, 2190 Brigham St., Bklyn, N.Y. 11229
Tomas Rosario, 1295 Spofford Ave., Bronx, N.Y.10474,Apt.1
Abe Dolgen, Local 10, ILGWU, 218 W. 40th St., New York, N.Y. 10018
Nat Klein, Secy., Executive Board, Local 10, ILGWU, 218 W. 40th St., New York, N.Y. 10018

Dear Sir and Brother:

Enclosed please find Decision of the General Executive Board Appeal Committee, in the matter of the appeal of Ovidio Vega, Raymond Cabel and Tomas Rosario.

Fraternally yours,

JAMES LIPSIG
Assistant Executive Secretary

jl/hw

Appeal of: OVIDIO VEGA , Ledger #17937
RAYMOND CABEL , Ledger #25777
TOMAS ROSARIO , Ledger #26288
ALL OF LOCAL 10

DECISION OF GENERAL EXECUTIVE BOARD APPEAL COMMITTEE

On the evidence in the record, the Local 10 Executive Board could properly have found the accused guilty as charged.

But an error committed in the conduct of the hearing compels us to order a rehearing of the charges. The Executive Board of Local 10, elected by the membership and consisting of rank-and-file members of the Union, not paid officers, was the proper trial body under our Constitution, since Local 10 does not have a standing Grievance Committee. The hearing was held at the beginning of a regularly scheduled business meeting of the Executive Board. It was contemplated that, after disposition of these charges, the regular business meeting would continue. Full time, paid officers of the Local, one of whom had preferred the charges, and several others of whom were supporting witnesses, are not members of the Local's Executive Board, under the ILGWU Constitution. But the presence of officers of a Local Union customarily is required at such regular business meetings of an Executive Board for reports and to provide information. In this case, after all the testimony had been presented, the Executive Board dismissed the accused and other witnesses, but allowed the officer of Local 10 who had preferred the charges, and the officers who had supported them, to remain in the meeting room while the Executive Board discussed the evidence and considered a decision. There is no evidence in the record, and none was presented by the accused, that any of the persons involved in the hearing as a charging party or as a witness, participated in or influenced the decision appealed from.

Nevertheless, there should be no possible cloud on any proceeding held under the disciplinary provisions of the ILGWU Constitution. While the error of permitting one party only to be present during the Grievance Committee's deliberations, may have been unintentional and made by inadvertence, it must be corrected. Therefore, we remand this case back to the Local 10 Executive Board, with instructions to hold a full rehearing on these charges, and to make its decision in executive session, and in compliance with the pertinent provisions of the ILGWU Constitution (Article 22).

Exhibit 11

JA 175

DECISION OF APPEAL COMMITTEE
of
GENERAL EXECUTIVE BOARD, ILGWU
(rendered July 22, 1975)
on

Appeal of:
OVIDIO VEGA, Ledger #17937
RAYMOND CABEL, " #25777
TOMAS ROSARIO, " #26288
All of Local 10

STATEMENT

This appeal came before this Committee after the rehearing directed by this Committee on April 28, 1975.

The appeal is from a decision of the Local 10 Executive Board, sitting as the Local's Grievance Committee, rendered on May 21, 1975, and communicated to the accused by letters dated June 4, 1975. By unanimous vote, the Executive Board suspended each of the three-named from participation in all union activities for a period of one year effective June 4, 1975, with the explicit reservation that this did not prevent any one of them from taking up such business as a member might properly have in the office of Local 10, so long as he did not interfere with the operation or activities of the local office.

The decision was rendered on charges filed by Abe Dolgen, Ledger #12352, which asserted violations of sub-division (e), (f), (c), (i) and (l) of Section 1, Article 20 of the ILGWU Constitution, "in that on January 29, 1975, each in conjunction with each other, jointly took possession of the office of the Manager of Local 10, obstructed and interfered with the conduct of the usual business of Local 10, interfered with the functioning of the business agents and officers of Local 10, and refused to leave said office when ordered to do so by officers of Local 10.

"And further, in that Raymond Cabel subsequently left the office of the Manager, proceeded on to the waiting room in the premises of Local 10, and sought to provoke physical action against the elected administration of Local 10, by members of Local 10 who were in such waiting room." As a result of their refusal to leave Manager Dolgen's office, after about an hour, policemen were sommoned, and Rosario and Vega were removed.

At the hearing before the Local 10 Executive Board, the appellants appeared with representatives named David Spitzer and John Kurtz, but refused to plead to the charges or to present any testimony, and submitted only a signed statement to the Executive Board, which is part of the record in this appeal. Their representatives did question briefly some of the witnesses who testified in support of the charges.

Their appeal letter of June 23, 1975, to this Committee contended that the trial in Local 10 was conducted unfairly. After receiving notification of the July 22 hearing date, they wrote on July 14, 1975, that they had to work overtime and could not appear. They stated that they desired the appeal to be decided on the basis of the record and their letters of June 23 and July 14. The July 14 letter challenged in more detail the fairness of the Local 10 hearing. By letter dated July 15, sent on behalf of this Committee, they were advised that they could have a postponement if they desired to appear in person. By phone on July 18, all three rejected a postponement and insisted they "stood on their letter of July 14."

At the hearing on July 22, there appeared the Chairman of the Local 10 Executive Board who presided at the May 21 hearing (Harry Rosenberg), the Acting Secretary, a member of the Executive Board who prepared the minutes of the May 21 hearing (Milton Strickler), and witnesses at that hearing (Bernard Zionsky, William Weiss, Edward Pastel, Nat Roth and Stanley Scheller), as well as the complainant, Abe Dolgen. Witness Nat Klein did not appear because he was hospitalized, and witness Marvin Glick because he was away on vacation.

The Minutes of the Local 10 Executive Board (Grievance Committee) hearing on May 21, as transmitted to the Appeal Committee from Local 10, were listed as Exhibit 1. They were examined by both Rosenberg and Strickler. The latter testified that he had prepared those Minutes from notes made by him during the May 21 hearing, and that the Minutes accurately and fairly portrayed what happened at that hearing, with reasonable completeness. Rosenberg agreed that the Minutes were accurate. Both witnesses testified that no persons but members of the Executive Board were present on May 21 after testimony had been completed and when the Board was reviewing the evidence and making its decision. The complainant is not a member of the Executive Board.

Thereupon, the May 21 Minutes were read with respect to the testimony reported therein of each witness present on July 22, and each witness, after his testimony had been read aloud, confirmed to the Appeal Committee that he had testified as reported in the Minutes. The witness Nat Roth stated, when he verified his testimony, that he was presently unemployed.

DECISION

We find no merit in the specific complaints made by the appellants against the procedures followed:

1) They presented no evidence to support their charge that the Trial Body was biased and had prejudged the case. No such conclusion can be drawn merely from the fact that the same body heard both cases. Under our Constitution, if a local does not elect a Grievance Committee to hear and decide cases of disciplinary proceeding (and Local 10 customarily did not), the Executive Board is authorized to serve also as the Grievance Committee.

The Local 10 Executive Board was elected by the membership of Local 10, and is the governing body of the Local. As such, its obligation is to represent all members, and there must be clear and convincing proof if it is charged that such obligation was not met. None has been supplied.

2) Appellants presented no more than a bare, unsubstantiated statement that the complainant, Abe Dolgen, controlled, manipulated and instructed the Executive Board in the hearing and decision.

3) The evidence before us demonstrates affirmatively that the record of the proceedings below (Ex.1) was accurate. Appellants offered no evidence to the contrary.

4) Appellants' contention that they were denied access to the record and therefore unable properly to prepare their appeal, is without merit. What is involved is not access to the record, but appellants' demand for a copy of the Minutes of the May 21 hearing. The procedure under the ILGWU Constitution, adopted by the membership of the Union at convention, and re-adopted by convention after convention (the last of which was in 1974), is that minutes of a disciplinary proceeding are prepared by the secretary of the trial body, who is a member of the Union, and are filed in the office of the Union. If an appeal is taken, a copy of the minutes is forwarded to the appellate body. Copies of such minutes are not provided to either the charging party or the person charged. From their appearance before the G.E.B. Appeal Committee at the first appeal in connection with these same charges, appellants were aware that at the appeal hearing, the minutes and any other pertinent material in the record would be read in their presence, and the opportunity afforded them to point out any errors or omissions. Also, they were advised in the letter notifying them of the appeal hearing date, that they could present any evidence they wished in support of their appeal, subject only to the requirement that it be relevant. For their own reasons, they chose a procedure which prevented this process from coming into play.

5) The Local 10 Executive Board properly refused to allow the appellants to make an electronic recording of the hearing. Under our Constitution, there is only one official record of a disciplinary proceeding, prepared by the secretary of a trial or appeal body. The wisdom of this rule has been corroborated by the evidence in recent public history of the manner in which "tapes" can be manipulated.

6) The appellants' bare statement denying the charges stands refuted by the overwhelming weight of the evidence of their guilt. For whatever reasons, they chose a procedure whereby they denied the charging party and the trial body an opportunity to subject their denials to examination. They therefore cannot complain when the testimony of seven witnesses affirming their guilt is accepted over their unsubstantiated denial.

The decision of the Local 10 Executive Board is sustained, and the appeal is rejected.

Exhibit 12

Statement to the Executive or
Trial Board of Cutters' Local 10

JA 178

The undersigned hereby appear at the hearing schedule in regard to charges filed against us by Abe Dolgen, Manager of Local 10.

Each of the undersigned objects to the presence or participation, on any trial body hearing such charges, of Nat Klein, a close political ally of the said Dolgen who, in addition to his political prejudice against the members here charged, was a participant in the events on which the said Dolgen bases his charges.

Each of the undersigned further objects to the presence or participation on any such trial board of any of the present members of the Local 10 Executive Board, on the ground that each such member of the Executive Board is and long has been a close political ally (English translation: stooge) of Messrs. Dolgen and Klein and is politically prejudiced against each of the members charged.

Each of the undersigned demands the right to bring a tape recorder to any trial or disciplinary hearing and record the proceedings thereon, on the ground that the right to make a full and accurate record of proceedings is inherent in the concept of a fair trial.

As to the charges. Each of the undersigned denies any violation of any provision of the constitution of the ILGWU. In particular: each of the undersigned categorically denies that he, or any of the members charged together with him, either "took possession" of any Local 10 office, or "obstructed" or "interfered" with any of the business of Local 10, or "interfered" with the functioning of any business agent or officer, or refused any orders by officers of Local 10. Each of the undersigned categorically denies that Brother Ray Cabel, or any other of the undersigned, "sought" or attempted to provoke physical action against anyone at any time, or performed any acts toward such an end.

Having some familiarity with the Moscow-style "trials" conducted by Local 10's Executive Board, none of the undersigned expects a fair trial on these charges; however, each is determined to exercise and exhaust, in good faith, all reasonable remedies available to him in regard to the disciplinary harrassment being carried out against him by Dolgen and his allies. Each of the undersigned protests, however, that this campaign of harrassment -- of which the charges are part -- is an attempt to intimidate and coerce rank-and-file members of Local 10 in the exercise of their union rights, and an attempt to persecute those rank-and-file members who have protested against the widespread violations of our collective bargaining agreement committed by employers in apparent collusion with Dolgen and other bureaucrats allied with him.

The said Dolgen has previously filed false charges against two of the undersigned, with the aim of causing their arrest and harrassment. When the time came to come forward, substantitate his charges and swear to a complaint, however, Dolgen chickened out: he wasn't man enough to come forward and air his charges in an open forum. Instead he seeks to use the kangaroo-court of stooges provided by Local 10's Executive Board to persecute his rank-and-file opponents on the same phoney charges.

Tomas Rosario
Ledger #26288

Ovidio Vega
Ledger #17937

Raymond Cabel
Ledger #25777

February 25,1975.

Defendants' Exhibit "A"

May 21, 1975

Exhibit 13

JA 179

Statement to the Trial Board of Local 10

The undersigned appear at the hearing scheduled in regard to charges filed against us by Abe Dolgen, Manager of Local 10.

Each of us denies the charges against us. Neither of the undersigned, at any time, either "took possession" of any Local 10 office, or "obstructed" or "interfered" with Local 10's business or the functioning of any business agent or officer, or committed any other violation of the ILGWU constitution. Each of the undersigned further denies that Brother Ray Cabel, or any of the undersigned, at any time "sought" or attempted to provoke physical action against any person at any time, or performed any acts toward such an end.

Each of the undersigned objects to the presence or participation on the Trial Board of any person who has pre-judged or previously judged us, or any of us, concerning the same or related charges against us. In particular, we object to the presence on the Trial Board of any person who participated in, or was present at, the previous hearing held in connection with these charges.

As the undersigned prviously have advised the Executive Board, we have too much familiarity with the Moscow-style "trials" conducted by Local 10's officialdom to expect a fair trial on the charges filed by Dolgen against us. We note that Dolgen was not man enough to show up in criminal court, where he previously had filed substantially the same charges against the two of us. Lacking the courage to appear in a public forum, he seeks instead, through a kangaroo-court manipulated and controlled by him, to persecute us and to thereby intimidate other members in their free exercise of their rights as Union members.

No honest or accurate record was taken of the previous hearing. The undersigned were even denied access to and use of the fraudulent and grossly inaccurate record that was taken by brother Nat Klein. Accordingly, the undersigned again demand the right to tape record the entire proceedings, in order to make a true and accurate account and record of what is said and done.

Tomas Rosario
Ledger #26288

Ovidio Vega
Ledger #17937

Raymond Cabel
Ledger #25777

Defendants' Exhibit "B"

BEST COPY AVAILABLE

Exhibit 14

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TOMAS ROSARIO, OVIDIO VEGA and RAY CABEL,

Plaintiffs,

-against-

AMALGAMATED LADIES' GARMENT CUTTERS' UNION, LOCAL 10 OF I.LG.W.U., et al.,

Defendants.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

TOMAS ROSARIO, being duly sworn, deposes and says:

1. I am one of the three plaintiffs in this action, am fully familiar with the facts and proceedings herein, and make this affidavit inssupport of plaintiffs' application for a preliminary injunction.

2. Each of the three plaintiffs has been disciplinarily suspended by the defendant Local 10, after a trial from which we were excluded and which we were not permitted to attend. Your deponent and plaintiff Vega were suspended for a period of 18 months; plaintiff Cabel was suspended for a period of 12 months, from the right to attend and participate in meetings. We have exhausted in good faith all remedies reasonably available to us within the labor organization for a period of more than four months.

3. From these bare facts -- which will be enlarged upon below -- it is apparent that the disciplinary suspension violates and infringes our rights under the Labor-Management Reporting and Disclosure Act of 1959, 29 USC 401, et seq., in at least two respects:

(a) first, it violates Section 101(a)(5)(C) of the Act (or LMRDA), 29 USC 411(a)(5)(C), in that we have been disciplinarily punished without having

been accorded a full and fair hearing; and

(b) the decision, on its face, infringes rights guaranteed to every union member by Sections 101(a)(1) and (2) of the LMRDA.

4. The disciplinary suspensions are presently in effect and we are presently suffering the denial of our valuable rights to attend and participate in membership meetings and to express our views, arguments and opinions in such meetings, by reason of such disciplinary suspension.

5. The charges under which we have been disciplined were filed against us by Abe Dolgen, Manager of Local 10, in February 1975. They relate to an incident in his office on January 29, 1975, which incident (and prior disciplinary punishments imposed on the basis of the same charges) are the subject of Rosario, et al. v. Dolgen, et al., 75 Civ. 4632 (CBM), presently pending in this Court. As the Complaint in that case duly alleges, we were tried twice on these charges and "unanimously" found guilty twice: the first time by a trial committee of which Dolgen himself, the charging party, was a member; the second time by substantially the same trial committee, this time without Dolgen, whose members had already judged us guilty.

6. After the previous action was instituted in this Court, the defendant International Ladies' Garment Workers' Union (or ILGWU), by its General Executive Board, on its own motion, voided the second disciplinary punishment and directed that we be tried for a third time on the same charges. That third trial is the one complained of here.

7. The trial date for our third trial was set for December 18, 1975. We duly appeared, ready for trial. The Trial Committee refused to conduct the trial and adjourned it to January 8, 1976.

8. On January 8, 1976 we again appeared for trial. Again, the Trial Committee refused to conduct the trial in our presence. They stood up, walked out of the trial room and left us

double office used by two of Local 10's business agents, locked the door, and proceeded to conduct "our" trial -- without us.

9. In short, we were excluded from the trial and were denied the right to confront and cross-examine witnesses against us, to present witnesses in our own defense, etc.

10. For several weeks, we heard no result. Then, by letter of January 28, 1976, the three plaintiffs here wrote to the Trial Committee's Chairman, asking whether there had been any decision. The Chairman replied by letter the next day, saying that a decision would be rendered. Several days later, each of the plaintiffs received a letter from the Secretary of Local 10's Executive Board, dated February 4, 1976, and containing a hand-written "Decision" of the Local 10 Trial Committee. In material part the Decision provides as follows:

> "We unanimously decide that Brothers Rosario and Vega are suspended from the right to and are barred from attending and participating in any and all Membership Meetings of Local 10 for a period of 18 months from Jan. 8, 1976, and that by a 4 to 1 vote we decided that Brother Cable ... is suspended from the right to and is barred from attending and participating in any and all Membership Meetings of Local 10 for a period of 12 months from Jan. 8, 1976; that in all other respects, Brothers Rosario, Vega and Cabel shall have full rights of membership...."

11. Each of us promptly appealed by a letter, dated February 7, 1976 and mailed, registered, on February 9, 1976, to the GEB Appeal Committee of the ILGWU. The ILGWU is Local 10's parent International, and the GEB Appeal Committee was and is the proper body to which to appeal, pursuant to the ILGWU's constitution. An appeal hearing was commenced on April 8, 1976 and, at the request of the Appeal Committee, all three of the plaintiffs were present. However, the Appeal Committee arbitrarily terminated the hearing shortly after it began. Despite repeated protests by plaintiffs, and demands in writing that the appeal hearing be continued, the hearing has never been continued or reconvened.

12. By the appeal proceedings described in paragraph 11 above, the three plaintiffs have exhausted for a period of more

than four months, all hearing and appellate procedures available to us within the labor organization. The GEB Appeal Committee has failed to hold any further hearing and has failed to reach a decision on our appeal. The only further appeal available to us is to the International Convention of the ILGWU, which will not meet until the summer of 1977.

13. The suspensions are presently in effect; they are not stayed pending appeal but, pursuant to the ILGWU constitution, go into effect immediately.

14. As noted earlier (paragraph 3) we have been disciplinarily suspended from exercise of a valuable right without first having been accorded a full and fair hearing. Since we (and also the fellow Union members who served as "counsel" for us) were excluded from the trial hearing, and were not allowed to attend it, we were thereby denied virtually all the rights of due process: we were not allowed to confront the witnesses against us; we were not allowed to cross-examine them; we were not allowed to bring witnesses in our defense; we were not allowed to testify in our own defense.

15. Moreover, as noted, the disciplinary suspension on its face violates the LMRDA. We have not been expelled from or suspended from membership in Local 10 or ILGWU, nor have we voluntarily withdrawn from membership; indeed, the Decision, in the passage quoted above (paragraph 10) states that in all respects other than membership meetings we "shall have full rights of membership." Since we remain members of the labor organization, the LMRDA continues to guarantee us the rights to attend and participate in membership meetings, and to express views, arguments and opinions there. Yet the Decision, on its face, plainly infringes those rights.

16. It is submitted that for the reasons indicated in paragraphs 14 and 15 above, we are plainly entitled to preliminary injunctive relief. But the infringements of our rights described

in those two paragraphs do not exhaust the list. In addition, we have been denied the right to have a record or transcript made of the disciplinary trial proceedings and have been further denied the right to see the "official" minutes, or notes, taken of our previous trials. As a result, even if we had been accorded the right to present a defense, we would have been handicapped in the presentation of that defense without either the right to make a record or the right to see what the witnesses in the previous trials are recorded as having testified to.

17. We have repeatedly and consistently asserted our right to see the "official" minutes of our trials and to make a record, either by bringing a competent stenographer or a tape recorder, of trial proceedings. Such a record is essential both to a fair hearing and to our own protection. Since an official of the Union, or his agent, takes the "official" minutes, and since these bear little relationship if any to what has actually transpired in the proceedings, there is good reason for members in our position to fear that, if we testify in our defense, our words will be twisted in the "official" minutes and, without an accurate record of our own, we will be unable to defend ourselves against accusations against us based on those "official" minutes.

18. It is my belief that the refusal of Local 10 and of ILGWU to permit us to make an accurate record of proceedings is as serious an infringment of our rights to a full and fair hearing as the exclusion of us from the trial hearing itself. It is because of that belief that we have repeatedly asserted our right to make such a record, have protested against its denial, and have refused to waive our demand. Your deponent knows of no reason why an honest man or woman should be afraid to have his or her words accurately recorded, when those words are spoken in a trial proceeding with the full knowledge that they are being recorded. Yet the officials of Local 10 and ILGWU have stiff-neckedly refused to allow us, or other members, to make an accurate record by any of the means available.

19. As noted in paragraph 13, the disciplinary suspension has not been stayed pending appeal. Article 23, Section 1(a) of the ILGWU's constitution provides that all decisions of trial bodies shall be binding as soon as rendered. As a result, the disciplinary suspension went into effect immediately and remains in effect.

20. Already, since the disciplinary suspension went into effect, there have been two membership meetings of Local 10 and at least one special meeting, in which or in regard to which our rights of participation were infringed by the disciplinary punishment. They have been as follows:

(a) On February 9, 1976, a membership meeting was held. Pursuant to the duspension, Plaintiff vega did not attempt to attend. Plaintiff Cabel and I did attempt to do so. We went to the entrance door and were told by the Sergeant at Arms that we could not enter because we had been suspended. Nevertheless, we managed to enter. But during the meeting, I sought to speak. I asked for the floor but the Chairman announced from the Chair that neither I nor the other two plaintiffs would be permitted to speak, and that I should not have been allowed to enter the meeting hall. Accordingly, I was barred from speaking and from participating at the meeting.

(b) On May 7, 1976, another membership meeting was held. Pursuant to the suspension and the ruling described above, all three plaintiffs -- Vega, Cabel and myself -- stayed away and did not attempt to attend.

(c) On may 25, 1976, a special meeting for members of Local 10 employed in sportswear shops was held. Plaintiff Cabel and myself work in sportswear shops. However, for the reasons indicated above, we did not attempt to attend the meeting. The meeting was held

to consider and/or ratify the collective bargaining ageeement under which we will be working. By being barred from attendance, we lost valuable rights in regard to the provisions and consideration of that agreement.

21. In short, we are already suffering grievous and irreparable injury as a result of the disciplinary suspensions. And we will continue to suffer such injury. Regular meetings of Local 10 are held quarterly, with special meetings in between. The next regular meeting is expected in September.

22. Unless this Court otherwise orders, the defendants, Local 10 and ILGWU, will continue to enforce and carry out our disciplinary suspension and each of the three plaintiffs will suffer grievous and irreparable injury and damage in the loss of their rights to attend and participate with other members at membership meetings and to express views, arguments and opinions at such meetings, for which injury and damage there is not adequate remedy at law.

23. Attached hereto as exhibits are copies of the following:

(i) the Trial Committee's decision, annexed as Exhibit "A"; and

(ii) the appeal by plaintiffs to the GEB Appeal Committee, annexed as Exhibit "B".

24. No previous application for the relief requested herein has been made.

WHEREFORE, deponent prays that plaintiffs' motion for a preliminary injunction be granted.

Sworn to before me this
8th day of July, 1976

Tomas Rosario

TOMAS ROSARIO

Exhibit 25(a)

UNITED STATES DISTRICT OFFICE
SOUTHERN DISTRICT OF NEW YORK

----------x

TOMAS ROSARIO, OVIDIO VEGA and RAY CABEL,

Plaintiffs,

-against-

AMALGAMATED LADIES' GARMENT CUTTERS' UNION, LOCAL 10 OF I.L.G.W.U. and INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO,

Defendants.

----------x

76 Civ. 3204 (CBM)

AFFIDAVIT

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

NAT KLEIN, being duly sworn, deposes and says:

1. I am the Secretary - Executive Board of Amalgamated Ladies' Garment Cutters' Union, Local 10 of International Ladies' Garment Workers' Union (hereafter Local 10), an officer duly elected by the membership of Local 10.

2. I am fully familiar with the facts in this case as I am with the facts in the case now pending before this Court, captioned "Tomas Rosario, Ovidio Vega and Ray Cabel, Plaintiffs, v. Abe Dolgen, individually and as Manager of Amalgamated Ladies' Garment Cutters' Union, Local 10, International Ladies' Garment Workers' Union, and the City of New York, Defendants, Docket No. 75 Civ. 4632 (CBM)," in which I made the main and reply affidavits in support of Local 10's motion to dismiss the Complaint.

That motion was argued on May 21st, 1976 and is still under consideration by the Court. Incidentally, Abe Dolgen retired on June 30, 1976 and is no longer Manager of Local 10 and he does not hold any other office in that Local.

3. I have read the Complaint in this action, the affidavit of Tomas Rosario in support of plaintiff's motion for a preliminary injunction and know the contents thereof. I have also read the Answer of Local 10 and all the other affidavits submitted herewith in opposition to plaintiff's motion for a preliminary injunction and in support of Local 10's motion for summary judgment and I know the contents of the Answer and of each affidavit and the Exhibits annexed thereto. I join with the other affiants in making and swearing to this affidavit in support for Local 10's motion for summary judgment and in opposition to plaintiff's motion for a preliminary injunction.

4. Since all the other affidavits submitted by Local 10 herewith fully state the incontravertible facts, supported by documentary evidence, I shall confine my affidavit to the following matters, all of which are also supported by documentary evidence:

I. Provisions of the Constitution of defendants and Statements of events preceding the commencement of this action.

II. The meeting of the membership of Local 10 held on November 24, 1975 and the allegations in respect thereto in Paragraphs 8, 9, and 10 of the Complaint.

III. Plaintiff's demand to the Trial Committee

for the official minutes of the two prior disciplinary proceedings against plaintiffs on the same charges and the denial by the Trial Committee of the said demand, as alleged in Paragraph 12 of the Complaint, and the demands for the minutes of the two prior disciplinary proceedings, as alleged in Paragraphs 16 and 17 of Rosario's affidavit in support of plaintiffs' motion for a preliminary injunction.

IV. The allegations in Paragraphs 13 and 15 of the Complaint and in Paragraphs 16, 17 and 18 in Rosario's affidavit in support of plaintiff's motion for a preliminary injunction in regard to the denial by the Executive Board of Local 10, sitting as a Grievance Committee (hereafter "Grievance Committee of Local 10") to accord plaintiffs the "right" to make an accurate record of their own in the two prior disciplinary hearings which had been held, either by bringing a competent stenographer or by the use of a tape recorder.

V. The allegations contained in Paragraph 20 of Rosario's affidavit in support of plaintiff's motion for a preliminary injunction.

I

Provisions of the Constitution of Defendants and Statement of Events Preceding the Commencement of this Action.

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5. The Constitution of defendant International Ladies' Garment Workers' Union, AFL-CIO, (hereafter "ILGWU")

is also the Constitution of Local 10, pursuant to Article 1, Section 3 thereof. A copy thereof is annexed as Exhibit "A" to the affidavit of James Lipsig (which I have read) in support of ILGWU's motion for summary judgment which is returnable at the same time as this motion, and it is hereafter referred to as "the Constitution".

6. Pursuant to Article 2, Section 1 of the Constitution, the highest authority of ILGWU is its Convention; between Conventions, the ILGWU's General Executive Board (hereafter "GEB") is the highest authority (Article 3, Section 1 of the Constitution). Under Article 35, Section 1 of the Constitution, interpretations of the Constitution by the GEB are binding upon the membership and the local unions affiliated with ILGWU unless and until reversed by the Convention.

7. Articles 20, 21, 22, and 23 of the Constitution deal respectively with "Disciplinary Grounds", "Filing and Hearing of Charges", "Trial Procedures", and "Appeals".

8. Under the Constitution and established procedures, the Executive Board of Local 10 sitting as a Grievance Committee (hereafter "Grievance Committee") is the recognized body to hear and determine, in the first instance, charges filed by one or more members of Local 10 against one or more members of that Local, except where a separate Trial Committee is required by the Constitution or ordered by the GEB of the International to hear the charges.

9. Under the Constitution: (a) a member of Local 10 aggrieved by the decision of the Grievance Committee of Local 10, if he desires to appeal, must do so directly to the GEB Appeal Committee and (b) if the Appeal Committee sustains the decision of the Grievance Committee, the entire membership of the GEB, may on its own motion review, affirm, modify or reverse a decision of the GEB Appeal Committee (Article 23, Section 5(d) of the Constitution).

10. The Constitution contains no provision requiring or permitting a stenographer or an electronic device or a tape recorder to be used by either the Grievance Committee or Trial Committee of any local union affiliated with the ILGWU or by the GEB Appeal Committee or by the accuser or the accused to record the hearing or trial or the appeal in disciplinary proceedings.

11. Hearings by the Grievance Committee or a Trial Committee of Local 10 or by the GEB Appeal Committee are recorded by the Secretary of the respective Committee who takes non verbatim official minutes in the same manner that official minutes are taken by the Secretary of Local 10 at its Executive Board and membership meetings. This procedure has been followed, ever since ILGWU came into existence in 1910 and ever since Local 10 has been chartered by it.

12. On February 10th, 1975, Abe Dolgen as a member of Local 10, preferred charges against each of the plaintiffs

for violating enumerated provisions of the Constitution and specifically charged:

> "In that on January 29, 1975 each in conjunction with each other, jointly took possession of the office of the Manager of Local 10, obstructed and interfered with the conduct of the usual business of Local 10, interfered with the functioning of the business agents and officers of Local 10, and refused to leave said office when ordered to do so by officers of Local 10.
>
> And further, in that Raymond Cabel subsequently left the office of the manager, proceeded on to the waiting room in the premises of Local 10, and sought to provoke physical action against the elected administration of Local 10, by members of Local 10 who were in such waiting room."

A copy of these charges is attached to the notice of hearing of these charges as Exhibit "A" annexed to the affidavit of Harold Brodsky submitted herewith and as Exhibit "A-1" annexed to Local 10's Answer to the Complaint herein.

13. Hearing on the aforesaid charges, upon due notice, and with a full and reasonable opportunity to plaintiffs to prepare their defense was held on February 25th, 1975 by the Grievance Committee of Local 10 which, after due deliberation, sustained the charges and imposed discipline upon the plaintiffs. Notice of the decision was given to plaintiffs and to Dolgen.

14. Plaintiffs, in a signed letter, dated March 10th, 1975, appealed from said decision to the GEB Appeal Committee in which they set forth the grounds upon which their appeal was based. The GEB Appeal Committee on April 21, 1975, after hearing Dolgen, the

charging party, and the plaintiffs, the accused parties and their representatives, and after considering the grounds of appeal stated in the aforementioned letter, dated March 10, 1975, vacated the decision rendered on February 25th, 1975 and remanded the charges to the Grievance Committee of Local 10 for a rehearing of the same. Notice of the decision was given to plaintiffs and to Dolgen.

15. The ILGWU Constitution provides in Article 22, Section 9: "No person shall be tried twice by the same body on the same charges except where a retrial has been ordered by an appellate body."

16. Dolgen's charges were refiled on May 8th, 1975. A copy thereof is annexed as Exhibit "A" to the affidavit of Harold Brodsky submitted herewith and as Exhibit "A-2" annexed to Local 10's Answer to the Complaint herein. A hearing was held on May 21, 1975 by the Grievance Committee of Local 10 on due notice to all parties. After due deliberation, it sustained the charges and imposed the same discipline as it did after the first hearing on the same charges.

17. Plaintiffs appealed to the GEB Appeal Committee from the second decision rendered against them in signed letters, dated June 23rd and July 14th, 1975, in which they stated the grounds upon which their appeal was based. On July 22nd, 1975, the appeal was heard on due notice to all parties and the GEB Appeal Committee on that date sustained the charges. In its decision it overruled plaintiffs contention that the Grievance Committee

of Local 10 was biased; it sustained the refusal of the Grievance Committee of Local 10 to permit plaintiffs to make a tape recording of the hearing. On this point the GEB Appeal Committee held that:

> "The Local 10 Executive Board properly refused to allow the appellants to make an electronic recording of the hearing. Under our Constitution, there is only one official record of a disciplinary proceeding, prepared by the secretary of a trial or appeal body. The wisdom of this rule has been corroborated by the evidence in recent public history of the manner in which "tapes" can be manipulated."

18. On October 8, 1975, on its own motion, the entire GEB decided "that because of the special circumstances surrounding the case, and the fact that the charges have already been heard twice by the Executive Board of Local 10, the charges shall be reheard de novo by a Trial Committee of Local 10, under the following conditions:

1) The Trial Committee shall be composed of rank-and-file members of Local 10 and shall consist of five (5) members and two (2) alternates selected by the membership of Local 10 at the next general membership meeting of the Local. Persons serving on the Trial Committee shall not have previously been involved in hearing the charges or in making the charges or in defending against them.

2) The Trial Committee shall select one of its members as Chairman. It shall also select a Secretary from among its members who shall prepare the official minutes of the hearing which shall be filed in the offices of Local 10. The official minutes or true copies thereof shall be made available for inspection in the offices of Local 10 by either the charging party or the accused upon their written request therefor. True copies of the minutes shall be furnished if so requested in writing. (Underscoring mine)

3) Should the Trial Committee find the accused or any of them guilty, any penalty which might be imposed shall not include disqualification as a candidate for Union office.

Copies of the decision of the GEB were mailed to plaintiffs and to Dolgen.

19. The two hearings and decisions aforementioned by the Grievance Committee of Local 10 and the two appellate hearings and decision by the GEB Appeal Committee and the decision of the GEB itself on October 8th, 1975, are involved in the first cause of action contained in another action pending in this Court captioned: "Tomas Rosario, Ovidio Vega and Ray Cabel, Plaintiffs, v. Abe Dolgen, individually and as Manager of Amalgamated Ladies' Garment Cutters' Union, Local 10, International Ladies' Garment Workers' Union, and the City of New York, Defendants, Docket No. 75 Civ. 4632 (CBM)" and are not before this Court in the present action.

II

The Meeting of the Membership of Local 10 held on November 24, 1975 and the Allegations in respect thereto in Paragraphs 8, 9, and 10 of the Complaint.

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20. Pursuant to the aforementioned decision of the GEB dated October 8th, 1975, notice was given by Local 10 to its members that a membership meeting of Local 10 will be held on November 24th, 1975 at 6:30 p.m. in the Terrace Room at the Statler-Hilton Hotel, 33rd Street and 7th Avenue, New York City.

21. The notice was given in the usual way. It was published in the English editions of "Justice", the official publication of ILGWU, of October 15th - November 1st, 1975 and of November 15th, 1975, copies of which are placed, upon publication, in a rack in the center of the lobby of the premises of Local 10 in full view of all members who come to the office, and which may be taken by the members at their pleasure. The copies remaining in the rack continue to be to be there until copies of the new issue of Justice are placed there, upon publication. It was placed on the bulletin board in the lobby of the offices of Local 10 sometime between October 15th and November 10th, 1975, the exact date I cannot recall.

Letters are sent to members of Local 10 of membership meetings when there is a special meeting or a regular meeting at which officers are to be nominated, elected or approved or when there is a special meeting of cutters who work in a particular segment of the ladies' apparel and allied industries.

22. Members of Local 10 knew about the membership meeting which was to be held on November 24th, 1975. Certainly, plaintiffs Rosario and Cabel knew about it because they attended it and raised plenty of fuss, as the minutes of that meeting, which I annex hereto as my Exhibit 1, show. It is true that there were fewer members present at that meeting than is usual, but the difference was not that great. The smaller than usual attendance was not due to lack of notice but because (a) November 24th was a very cold day; (b) the garment market was quiet during

that week; (c) most cutters were laid off; (d) there was hardly any overtime work for those who did work on that day; and (e) workers who did work on that day finished at approximately 4:00 p.m. and, because of the cold weather, did not want to hang around without anything to do until the meeting which was, as usual, scheduled to start at 6:30 p.m. and, as usual, does not start until 7:00 p.m.

23. Paragraphs 20-22 above answers the first part of Paragraph 8 of the plaintiffs' Complaint in this Action, but the allegation therein "and allowed for greater than usual domination of the meeting by the incumbent officers of Local 10" is wild, spurious and cannot, in any possible way be supported by any facts or by the credible testimony of any witness either in an affidavit or at a trial because the quoted allegation is totally untrue. Not only do I say this, but so do all the other members of Local 10 who nominated the members of the Trial Committee as well as the nominees who became the members and alternates of the Trial Committee (with the exception of Flemmie Adams who is presently on vacation) so swear in their affidavits which are being submitted herewith. All these affiants deny, as I do, the allegations above quoted which appear in Paragraph 8 of the Complaint.

24. The aforementioned affiants all swear in their affidavit, as I do in this affidavit, that they received due notice of the membership meeting of November 24th, 1975 and deny under oath, as I do, the allegation in Paragraph 9th of the Complaint that the persons who did the nominating and the persons who were nominated and

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elected were "hand-picked by the Manager of Local 10 and by others allied with him." There is no way in the world that plaintiffs can prove or support this wild, spurious and untrue statement by any credible testimony in an affidavit or by any credible testimony at a trial.

25. Each of the affiants aforementioned, who was elected as The Trial Committee and as alternates denies under oath, as I do, the allegations in Paragraph 10th of the Complaint that he "was and is allied with the incumbent officialdom of Local 10 and biased against each of the plaintiffs because of the plaintiffs' opposition to the officers". This is another typical wild, untrue assertion which in no way can be proved by any credible testimony in an affidavit or at a trial.

26. I admit that, at the membership meeting of Local 10 on November 24th, 1975, the Trial Committee "was elected by an open hand vote" as alleged in Paragraph 9th of the Complaint but I deny the allegation that such election was "over the objections of the plaintiffs." The simple and unvarnished truth is that plaintiffs did not make such an objection and this fact is supported by the Statement signed by plaintiff Rosario dated November 24th, 1975 and read by him on his own behalf and on behalf of the other two plaintiffs at the November 24th membership meeting. It is attached to the minutes of that meeting as Exhibit 1 and I annex it again to this affidavit as my Exhibit 2, for the convenience of the Court. The Court will note that there is not a word in that Statement with respect to the manner in which the election shall be held.

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27. The minutes of the membership meeting of November 24th, 1975 (Exhibit 1 annexed hereto) show that the decision of the GEB of the ILGWU, dated October 8th, 1975 (Exhibit B annexed to the Complaint; quoted above in Paragraph 18) was read to the membership and the instructions to the membership of Local 10 to elect a new Trial Committee of five members and two alternates to hold a hearing "de novo" of the charges which were preferred by Dolgen, a member of Local 10 against Rosario, Vega and Cabel.

28. The said minutes also show that only seven (7) candidates were nominated at the meeting and that the membership voted that the five receiving the highest votes should be declared elected as the members of the Trial Committee and that the other two should be declared elected as alternates.

29. No secret ballot is required for the election of a Trial Committee, and, as I have fully demonstrated, none was called for.

30. However, in order to determine who received the highest and the lowest votes, the Chairman asked the nominees to rise. Then he ordered a hand vote to be taken with respect to each candidate. All in favor were required to raise their hands and they were counted by the tellers appointed by the Chairman. Then the Chairman asked with respect to each candidate, that the members who were against their election should raise their hands and the tellers made the count. The tellers reported the vote for and against each nominee to the Chairman. Some members

abstained from voting. The vote appears in the minutes of the meeting (Exhibit 1 annexed hereto). The highest vote cast against any nominee was two (2). I note that Brother Kotler, a supporter of plaintiffs and Brother Kurtz who acted as a representative of the plaintiffs in their two prior hearings were asked to serve as tellers but both declined to do so. Two others were appointed in their stead.

III

Plaintiffs' Demand to the Trial Committee for the Official Minutes of the Two Previous Disciplinary Proceedings against Plaintiffs on the same Charges and the Denial by the Trial Committee of the said Demand, as alleged in Paragraph 12 of the Complaint and the Demands for the Minutes of the Two Prior Disciplinary Proceedings, as alleged in Paragraphs 16 and 17 in Rosario's Affidavit in support of Plaintiffs' Motion for a Preliminary Injunction.

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31. The falsity of the allegation in paragraph 12 of the Complaint is demonstrated on page 8 of Mittleman's affidavit which is being submitted herewith by Local 10 along with my affidavit and the affidavit of others. Paragraph 12 of the Complaint alleges:

> "Prior to December 18, 1975, the three plaintiffs demanded and requested of the trial committee that they be supplied with copies of the official minutes of the previous trials already conducted on the charges against them. Their request

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> and demand was denied and they have not been supplied with copies of the said official minutes."

It is true that Rosario sent a letter to Mittlemen dated December 22nd, 1975 (Exhibit 4A annexed to Mittleman's affidavit) in which there were enclosed photostatic copies of letters to Klein requesting photostatic copies of the minutes of the two prior disciplinary proceedings (Exhibit 4C annexed to Mittleman's affidavit) and a letter sent to Lipsig requesting copies of the minutes taken by the GEB Appeal Committee dated April 8th, 1975 and July 22nd, 1975. In Mittleman's reply to Rosario on December 24th, 1975 (Annexed to his affidavit as Exhibit 5) he stated:

> "I cannot go into the question, at this time, of the minutes you require of Brothers Klein and Lipsig. Neither I nor the Trial Committee can make any ruling until we hear the arguments why these documents are necessary to prepare for a new trial and why the minutes requested have been refused. Our Trial Committee will make this ruling only if you appear at the adjourned hearing without a tape recorder or any other electronic recording device and after we hear the arguments."

32. It is true, as stated in paragraphs 16 and 17 of Rosario's affidavit in support of plaintiff's motion for a preliminary injunction, that demand was made of me and of Local 10's attorney, Emil Schlesinger, Esq., and of the Trial Committee of certain documents, in advance of the first hearing held on December 18th, 1975. These demands and the replies thereto are as follows:

(a) Letter from Spitzer to me dated October 27th, 1976 in which he requested

(i) Minutes of the membership meeting of February 10, 1975;

(ii) Copies of the minutes of the February 25th, 1975 Executive Board meeting; and

(iii) True copies of the membership meeting of May 19th, 1975.

This letter is annexed hereto as Exhibit 3.

I was on vacation at the time and the letter was answered on November 6th, 1975 by Local 10's attorney. This letter is annexed hereto as Exhibit 4.

(b) Letter dated November 10th, 1975 from Burton H. Hall, Esq., the attorney for plaintiffs, to Emil Schlesinger, Esq. It is annexed hereto as Exhibit 5.

Letter dated November 18th, 1975 from Mr. Schlesinger in reply to Mr. Hall's letter of November 10th, 1975. This is annexed hereto as Exhibit 6. That letter states the official position of Local 10 as follows:

> "Specifically, in answer to the points raised in your letter, I wish to inform you that it is not the practice of Local 10 to make or hand out copies of the minutes of its membership meetings and I don't know of any provisions in the law which requires it to do so. The minutes are open for inspection to two or three members of Local 10 a day, upon reasonable notice, at a reasonable hour during the day when the office of Local 10 is open for business.
>
> So far as concerns a copy of the minutes of the February 25, 1975 Executive Board Local 10 meeting sitting as a Grievance Committee on charges preferred by Dolgen against Cabel, Rosario and Vega, which Messrs. Spitzer and Cabel did request and which you urge to be given, I believe it to be the better part of wisdom not to give any copies of these minutes to anybody. The Grievance Committee decision for the first time was reversed by the GEB Appeal Committee and remanded for a new trial. The new trial which was subsequently held was reversed by the GEB itself at its meeting on October 8, 1975, and the charges

remanded for a new trial by a trial committee elected by the membership of Local 10 for a new hearing. The election will take place Monday, November 24, 1975.

I believe that giving minutes which set forth the particulars of either of the former trials before the Grievance Committee of Local 10 would be highly prejudicial to Messrs. Cabel, Rosario and Vega and not in the best interests of Local 10 and its members. If copies of these minutes should be given to Messrs. Cabel and Spitzer or to you and should be reproduced and handed out to members of Local 10, some of whom may be elected to serve on the Trial Committee or handed out to members of the Trial Committee after they have been elected, they would be extremely prejudicial.

The proceedings of the Executive Board of Local 10 sitting as a Grievance Committee with respect to the charges filed by Dolgen individually against Cabel, Rosario and Vega, are as dead as a "dodo" since they have been mooted by the decision of the GEB on October 8, 1975. I prefer, in the interests of a fair new trial, and have so advised Mr. Klein, that they remain so."

(c) Letters to me dated December 8 and 9, 1975, signed by the plaintiffs requesting data enumerated therein. It is annexed hereto as Exhibit 7.

As will be noted, these letters contain the statement:

> "These minutes are necessary for the undersigned to have a fair opportunity to prepare and present a defense at the trial which will be held on Thursday, December 18th, 1975...." (Underscoring mine)

No suggestion was ever made that the documents were necessary for the cross examination of Dolgen or any of his witnesses who had testified in the two prior disciplinary proceedings or to confront them with their previous testimony.

Letter dated December 10th from Emil Schlesinger, Esq. to Burton H. Hall, Esq., in reply to the above letter. It is annexed hereto as Exhibit 8.

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(d) Letter dated December 22nd, 1975 signed by plaintiffs addressed to Mr. Klein requesting the documents set forth therein. It is annexed hereto as Exhibit 9.

That letter also concludes with the statement:

> "These minutes are necessary for the undersigned to have a fair opportunity to prepare and present a defense at the next trial which will be held in three weeks, according to decision of adjournment by brother David Mittleman at the trial held on December 18th, 1975. (Underscoring mine)

Mr. Klein's reply thereto dated December 24th, 1975 is annexed hereto as Exhibit 10.

33. The minutes of the hearing held on December 18th, 1975 by the Trial Committee was forwarded by Harold Brodsky, Secretary of the Trial Committee to all the plaintiffs on December 26th, 1975. (Exhibit B annexed to Brodsky affidavit).

34. Local 10 admits that it did not provide the minutes of the two prior disciplinary proceedings against plaintiffs because they were not necessary to prepare a defense to Dolgen's charges; that by reason of the decision of the GEB ILGWU ordering a hearing "de novo" both prior proceedings became as dead as ashes and that ashes cannot be revived; and that in the interests of a fair, impartial and genuinely "de novo" hearing on the charges preferred by Dolgen against plaintiffs, it would be highly prejudicial if the minutes of the prior hearings should come to the attention of the Trial Committee and give the appearance that it had been or was being influenced by the minutes in the two prior disciplinary proceedings.

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35. Finally it should be noted that plaintiffs have completely abandoned their claim to copies of membership meetings of Local 10. Not a word concerning this matter is contained in the Complaint herein or in plaintiffs' affidavit in support of plaintiffs' motion for a preliminary injunction. Plaintiffs were accorded the right to inspect the minutes of the prior meetings of Local 10 which they requested but they failed to avail themselves of the opportunity to do so.

IV

The Allegations in Paragraphs 13 and 15 of the Complaint and in Paragraphs 16, 17 and 18 in Rosario's Affidavit in Support of Plaintiffs' Motion For a Preliminary Injunction in Regard to the Denial by the Executive Board of Local 10, Sitting as a Grievance Committee (hereinafter "Grievance Committee of Local 10") to Accord Plaintiffs the "Right" to make an Accurate Record of Their Own in the Two Prior Hearings which Had Been Held, Either By Bringing a Competent Stenographer or By the Use of a Tape Recorder.

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36. As I have stated in Paragraph 10 above, the Constitution of ILGWU which is also the Constitution of Local 10 contains no provision requiring or permitting a stenographer or an electronic device or a tape recorder to be used by either the Grievance Committee or Trial Committee of any Local affiliated with the ILGWU or by the CEB Appeal Committee of ILGWU or by the accuser or the accused to

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record the hearing or trial or the appeal in disciplinary proceedings.

37(a). Contrary to the allegations contained in Paragraph 13 of the Complaint and in Paragraph 17 of Rosario's affidavit in support of plaintiffs' motion for a preliminary injunction, plaintiffs never requested that a competent stenographer, or any stenographer, whether or not recognized or designated by the Court, record the proceedings in plaintiffs two prior disciplinary hearings or to pay the expenses of such stenographer. These facts cannot be denied. They are supported by the plaintiffs' signed Statement submitted at the first hearing on September 25, 1975 of the charges which had been preferred against them. (A copy of that Statement is annexed hereto as Exhibit 11), and by the plaintiffs' signed Statement submitted at the second hearing of the same charges on May 21, 1975. A copy of that Statement is annexed hereto as Exhibit 12.

I was present on April 21, 1975 at the GEB Appeal Committee's hearing of the plaintiffs' appeal, dated March 10, 1975, from the decision rendered against them on February 25, 1975 after the first hearing. I heard read plaintiffs' appeal letter of March 10, 1975 and I listened carefully to the statements made by plaintiffs' representatives at the hearing. I hereby aver that said letter did not mention a single reference to a stenographer and that plaintiffs and their representatives neither brought a stenographer with them nor requested a stenographer to record the hearing of their appeal.

I also recall vividly that the minutes of the Grievance Committee of Local 10 of the hearing of February 25, 1975 were read to the accused and that they and their representatives contended that the minutes were inaccurate. However, when asked to indicate the inaccuracies of which they complained, they refused to make any comment, or give any indication, or make any request to correct any statement contained in the minutes.

I was also present on July 26, 1975, at the GEB Appeal Committee hearing of the plaintiffs' appeal, dated June 23, 1975, which was supplemented by their letter of July 14, 1975. Plaintiffs were not present at the hearing but sent word that they would rely on the statements contained in their letters of June 23 and July 14, 1975. I heard both of the appeal letters read and hereby aver that there was not a single word contained in either of those letters which in any way referred to a stenographer.

It has been the tradition of the ILGWU and its Locals and its other subordinate organizations not to permit the use of stenographers at Grievance Committee hearings, Grievance Committee trials or at GEB Appeals Committee hearings. A stenographer selected by the accuser or by the accused may be willing to doctor his or her notes at the request of the party who pays him or her. Often the stenographer, depending on the extent of his or her capability, is unable to hear accurately or read back what a speaker has said or to record what has been said when more than one person speaks at the same time. Moreover, the fees

of public stenographers are staggering and Local 10 has never been willing to bear the expense.

I am intrigued by the allegation in Paragraph 13 of the Complaint which suggests that "It would be futile for them (plaintiffs) to have appeared alternatively with a court reporter or competent stenographer for the purpose of making a record". The great expense incurred does not jibe at all with the statement in Point IV (p. 12 of plaintiffs' Memorandum of Law) that, instead of consolidation, a "supplemental complaint, setting forth facts that have occurred since the filing of the original complaint in that (the prior) case, would set forth the facts which comprise the present suit". It further states that "the outcome of such application would be to accomplish consolidation without the necessity of bringing the present action as a separate action -- and hence the saving to plaintiffs of the not inconsiderable sum of $15 -- and without the necessity for any application under Rule 42 FRCP". If the plaintiffs were unwilling to pay the sum of $15 for the filing of a supplemental complaint, it is most difficult to believe that they were willing to pay hundreds of dollars for a stenographer to make a record of the disciplinary hearings on December 18, 1975 and on January 8, 1976.

(b) I admit that at the two hearings before the Grievance Committee of Local 10, i.e., on February 25, 1975 and on May 21, 1975, plaintiffs demanded in their signed written Statements submitted to the committee the right to bring a tape recorder to record each proceeding. I admit that on each occasion these requests were denied and

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I hereby aver that plaintiffs participated in each of the hearings without the use of the tape recorder which plaintiffs had brought with them.

It has been the tradition of the ILGWU and its Locals and its other subordinate organizations and of the GEB Appeal Committee not to permit the use of tape recorders at Grievance Committee Trials or at Appeal Hearings. It is now a matter of public knowledge how tapes can be doctored and how unclear they frequently come out on a rerun.

(c) I hereby aver, having been present on April 21 at the hearing of plaintiffs' appeal from the first decision of the Grievance Committee of Local 10, I heard read plaintiffs' letter in support of their appeal and that the denial of the use of a tape recorder by the Grievance Committee of Local 10 to record the minutes of the hearing was not one of the grounds of their appeal. The plaintiffs' appeal letter is annexed hereto as Exhibit 13.

I recall vividly that plaintiffs attempted to use a tape recorder which they brought with them at the appeal hearing and that the Chairman ruled that the tape recorder would not be permitted to record the appeal and that plaintiffs complied with the ruling and the appeal hearing proceeded with plaintiffs' participation in it without the use of their tape recorder in operation.

(d) I hereby aver, having been present on July 22, 1975 at the hearing of plaintiffs' appeal from the second decision of the Grievance Committee of Local 10,

I heard read the plaintiffs' appeal letters of June 23, 1974 and July 14, 1975. The first letter contained no reference to the denial by the Grievance Committee of Local 10 of the use by plaintiffs of a tape recorder. The letter of July 14 did. With respect to this ground of appeal, the GEB Appeal Committee ruling is set forth in full in Paragraph 17 above.

38. The facts are undeniable that as early as February 25, 1975 and not later than July 22, 1975, plaintiffs knew that it was the position of the Grievance Committee of Local 10 and of the GEB Appeal Committee that no tape recorder would ever be permitted to be used to record hearings or appeals in disciplinary proceedings. Notwithstanding the aforesaid, and knowing full well that on October 8, 1975 the GEB of ILGWU ordered a hearing de novo on the charges preferredagainst plaintiffs and that one of the conditions thereof was that the Secretary of the Trial Committee "shall prepare the official minutes of the hearing", plaintiffs persisted at the hearing of December 18, 1975 before the Trial Committee elected by the membership of Local 10, and at the adjourned hearing of January 8, 1971, as the accompanying affidavits of Mittleman, Brodsky and Harris fully demonstrate, upon tape recording the hearings and frustrating the possibility of ever holding a hearing except upon their own terms. In their signed Statement dated December 18, 1975 (annexed to Mittleman's Affidavit as Exhibit 4B), the plaintiffs stated "Accordingly we insist upon our right to have these

proceedings recorded by us on a tape recorder, such right to make a full and accurate record of proceedings is inherent in the concept of a fair trial." (Underscoring mine)

39. The fact is undeniable that at no time prior to the commencement of the present action did the plaintiffs do anything to obtain a ruling by a court in an appropriate plenary action or in any other proceeding in a court of competent jurisdiction on the question of whether they had a right to use a tape recorder to record the hearings which were to take place before the Trial Committee elected by the membership of Local 10 at its November 24, 1975 meeting even though I suggested this procedure to them in my reply affidavit dated December 19, 1975 which I submitted in the prior action in respect of Local 10's motion to dismiss the complaint in that action.

40. I hereby resent and deny the allegations contained in Paragraph 17 of Rosario's affidavit in support of plaintiffs' motion for a preliminary injunction that either I or any other official of the Union takes "official minutes . . . which bear little relation if any to what has actually transpired in the proceedings", especially since Rosario has asserted and the Complaint herein alleges that plaintiffs never saw any of the minutes in the two prior disciplinary proceedings. The official minutes of the meetings are accurately reported.

I deny Rosario's statement that "there is good reason for members in our position to fear that, if we

testify in our defense, our words will be twisted in the 'official' minutes and, without an accurate record of our own, we will be unable to defend ourselves against accusations against us based on those 'official' minutes." There is no basis for this accusation and plaintiffs cannot offer any credible testimony in any affidavit or in any trial to support their statement. Under the GEB's Decision of October 8, 1975 plaintiffs were not barred from taking their own notes of the hearing.

On the other hand, I, on behalf of myself and Local 10, have very serious doubts as to whether or not plaintiffs will make an accurate record of their own. Besides their record would not be an official record and would have no significance and carry no weight as part of the official records.

The reasons why a tape recorder was denied to plaintiffs by the Trial Committee in rehearing de novo the charges preferred against plaintiffs is best stated in the affidavits of Mittleman and Brodsky, which are being submitted herewith. In the Brodsky affidavit, on page 5 thereof, under Paragraph 16, he states the following:

> "Our Trial Committee decided that no tape recorder would be permitted by anyone to record the hearings in this case. The reasons are expressed in Mittleman's affidavit to which I have referred above. I quote therefrom the following:
>
> 'The reason why our Committee refused to permit the accused to tape record the hearings were: (a) the accuser did not bring a tape recorder to the hearing to record it; (b) a tape recorder could be manipulated in various ways such as

stopping the recording when damaging testimony is offered by thos in opposition to the one who is doing the recording; (c) erasures can be easily made; (d) tapes can be replayed on another tape on another recorder and, in the process of doing so, portions originally taped which were unfavorable to the accused could be eliminated; and (e) the contentions could then be made by the accused that tapes which had been tampered with were more reliable than the official minutes taken by the Secretary."

Incidentally, I had in the back of my mind what had happened in the Watergate hearings when 18-1/2 minutes of tape had been erased and where on a playback it was unclear what had been said, and the confusion which resulted when more than one person spoke at the same time."

V.

The Allegations Contained in Paragraph 20 of Rosario's Affidavit in Support of Plaintiffs' Motion For A Preliminary Injunction.

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41. In Paragraph 20 of Rosario's affidavit in support of plaintiffs' motion for a preliminary injunction, he cites two membership meetings of Local 10 and one special meeting in which the rights of participation of plaintiffs were infringed upon by the disciplinary punishment.

42. The statement with respect to the February 9 meeting demonstrates the complete contempt which the plaintiffs have for orderly procedures.

(1) In the case of the February 9 meeting, Rosario and Cabel broke into it, in defiance of the decision of the Trial Committee rendered on January 29, 1976.

(2) They were found guilty by the Trial Committee of refusing to leave the office of the Manager of Local 10 after their business was finished and staging a "sitdown" making it impossible for Local 10 to continue its business.

(3) They refused to abide by the ruling of the Trial Committee not to tape record the hearings and, by reason of that fact, they frustrated the possibility of a hearing on the charges against them from ever being held unless it was held without their being present. They were advised that this would happen but they chose not to heed it.

43. With respect to the membership meeting of February 9, 1976 plaintiffs suffered no irreparable damage. The only thing discussed at that meeting was the Manager's report which concerned the negotiations and the terms of the collective agreement concluded in the dress industry and the negotiations which were continuing in the children's dress industry.

44. With respect to the meeting of May 7, 1976 the plaintiffs were specifically invited by letter addressed to them to attend that meeting. The affidavit of Israel Mechlowicz which is being submitted herewith affirms that fact. However, plaintiffs chose to stay away.

45. With respect to the meeting of May 25, 1976, a special meeting for members of Local 10 employed in sportswear shops, plaintiffs Rosario and Cabel were invited by letter to attend. This is also made clear in the affidavit of Israel Mechlowicz which is being submitted herewith. However, both plaintiffs chose to stay away.

46. Local 10 has interpreted the decision of the Trial Committee as giving the right to the three plaintiffs to attend all meetings to which they are invited by letter from Local 10. It is because of this interpretation that their names have not been removed from the mailing list of Local 10 and that letters were sent to the three plaintiffs to attend the meeting of May 7, 1976 and to plaintiffs Rosario and Cabel to attend the special meeting on May 25, 1976. Reference is here made to the aforementioned affidavit of Israel Mechlowicz.

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47. The trial de novo is described in detail in the affidavits which follow and to which the Court's attention is respectfully referred.

48. On February 4, 1976 I sent a copy of the Decision of the Trial Committee and "True copies of the official minutes of the Trial hearing" to plaintiff Rosario who requested it in writing. A copy of my letter is annexed hereto as Exhibit 14.

Nat Klein

Nat Klein

Sworn to before me

this 17 day of August, 1976

Solomon Berger

Notary Public

SOLOMON BERGER
NOTARY PUBLIC, State of New York
No. 24-0557915
Qualified in Kings County
Commission Expires

THE 634th REGULAR MEMBERSHIP MEETING of the Amalgamated Ladies' Garment Cutters' Union Local 10, I.L.G.W.U., was held on Monday, November 24, 1975 at the Statler Hilton Hotel, 33rd Street and Seventh Avenue, New York City in the Terrace Room.

The meeting was called to order by President Baldino. In the absence of Ceasar Nieves, Brother Bernard Zimmerman was appointed Sergeant-at-Arms.

President Baldino stated that at this meeting the Secretary would read minutes in which he is a party to charges brought against him and in order to be fair and impartial he would relinquish the chair to the Vice President. Vice President Jack Goldberg then conducted the balance of the meeting.

Secretary Nat Klein read a communication in full from the beginning to end from the General Executive Board dated October 8, 1975 in which, among other things, the membership of Local 10 was instructed to elect a new trial committee of five members and two alternates to hold a hearing "de novo" of the charges which had been preferred by Dolgen, a member of Local 10, against Rosario, Vega and Cabel.

Brother Tomas Rosario asked for and was given the floor. He read a prepared statement and handed the same to Secretary Nat Klein. A copy of that statement is attached to the minutes of this meeting.

The Manager answered by stating that the members were informed of this meeting in the same manner as every other meeting of Local 10, through the medium of the Justice in two issues plus the bulletin board in the Local. Only where a special meeting is called for is there a letter sent to the membership.

Brother Raymond Cabel asked for and was given an opportunity to speak. He commenced talking on the merits of his case. The

Chairman ruled him out of order because the facts of the case were not before the meeting but only the election of the Trial Committee. Brother Cabel continued to give his version of the facts. The Chairman again ruled him out of order for the same reason and asked him to be seated. This went on repeatedly.

At no time did Brother Cabel appeal from the Chairman's ruling that he was out of order. The members were becoming restless and started to shout at Brother Cabel to sit down but Brother Cabel refused to do so. The Chairman then requested the Sergeant-at-Arms Bernard Zimmerman to restore order and to escort Brother Cabel to his seat because he was disrupting the meeting. The Sergeant-at-Arms walked over to Brother Cabel and requested him to sit down. When Brother Cabel refused to do so, the Sergeant-at-Arms removed the microphone in front of Brother Cabel and brought it up to the platform. Then, nominations for members and alternates of the Trial Committee proceeded while Brother Cabel was still standing and heckling without a microphone.

The nominations and nominees were as follows:

Abe Hoffman, #14190 nominated Harold Brodsky, #16739
Jerry Selterman, #7933a nominated Dave Mittleman, #16417
Carl De Angelis, #27280 nominated Sam Boccasini, #20297
Abe Melnick, #12633 nominated Murray Edwin, #25320
Morris Updegrove, #21908 nominated Flemmie Adams, #21401
Harold Buchler, #14313 nominated Jerry Seidband, #17798
Irving Treshansky, #11853 nominated Dave Sirota, #10415

The Chairman called for further nominations but none were forthcoming. A motion was made, seconded and passed to close nominations. There being seven nominees, the membership voted that those five brothers receiving the highest votes would be elected members of the Trial Committee and the other two brothers would serve as alternates.

The Chairman asked the following Brothers to serve as tellers and count the vote; Brother Irving Kotler, who declined; Brother Kurtz, who had acted as the representative for the three accused in the two previous trials, also declined; Brother Herbert Azar, who accepted and Brother George Cooper, who accepted.

The Chairman called on each nominated brother to rise while the membership voted and the tellers walked down the aisles and counted the raised hands.

The results of the voting are as follows:

	For	Against
Harold Brodsky, #16739	135	2
Dave Mittleman, #16417	165	2
Sam Boccasini, #20297	147	2
Murray Edwin, #25320	163	2
Flemmie Adams, #21401	160	1
Dave Sirota, #10415	134	1
Jerry Seidband, #17798	132	1

The following five brothers were declared elected members of the Trial Committee:

Harold Brodsky, #16739

Dave Mittleman, #16417

Sam Boccasini, #20297

Murray Edwin, #25320

Flemmie Adams, #21401

The following two brothers were declared elected alternates of the Trial Committee:

Dave Sirota, #10415

Jerry Seidband, #17798

A motion was made and seconded to adopt the minutes of the Special Meeting of Wednesday, September 24, 1975. This meeting

was devoted to an address by President Sol C. Chaikin. The membership passed this motion.

The minutes of the Regular Membership Meeting of Monday, May 19, 1975, were read by the Secretary. Brother Kotler asked for and was given the floor on a correction to these minutes. He claimed that the Secretary failed to read the details of a pending case and gave a wrong explanation about the reading of the case.

The chair called for a hand vote on this set of minutes and the same tellers as were previously appointed counted the vote. The vote was as follows; 157 for acceptance and 9 opposed. The Chairman declared the minutes of May 19, 1975, adopted as read.

Upon motion made and seconded, the Executive Board minutes of May 21, 1975, were adopted by the membership.

Upon motion made and seconded, the Executive Board minutes of June 5, 1975, were adopted by the membership.

The Secretary then read the minutes of the Executive Board Meeting of June 26, 1975. Brother Kotler was granted the floor on this set of Executive Board minutes and said the full statement read by Brother Rosario at the June 26, 1975 Executive Board Meeting was not included in the minutes. The Secretary replied that the essential parts of his statement are included in the minutes and that the entire statement made by Rosario is attached to the June 26, 1975 Executive Board minutes. Upon motion made and seconded, the minutes of the Executive Board of June 26, 1975 were adopted by the membership.

Upon motion made and seconded, the Executive Board minutes of July 24, 1975 were adopted by the membership.

Upon motion made and seconded, the Executive Board minutes of September 11, 1975 were adopted by the membership.

Upon motion made and seconded, the Executive Board minutes of October 16, 1975 were adopted by the membership.

The resignation of Arthur Falcone as a member of the Executive Board of Local 10 was read. Brother Falcone served our local and our union for more than a quarter of a century, honorably and well.

MANAGER'S REPORT:

Vice President Dolgen reported that for the months of July, August and September there was work for almost all the cutters, but it started slowing up during the last few weeks. With all that, if we had calls for 40 or 50 men we would be in good shape. The manufacturers that the Manager had spoken to looked forward and expected a good spring season.

The first few sessions in the negotiations for a new dress agreement were held the early part of November with little progress being made. President Chaikin addressed a joint meeting of the union and the manufacturers in the Penn Top Room of the Statler Hilton Hotel and gave the background and laid the groundwork of the union's position in the forthcoming negotiations which will be headed on the union side by Vice President Siems. These negotiations will continue until a satisfactory agreement is reached by the January 31, 1976 deadline or the workers in the dress shops will not be at their machines or tables after that date without an agreement being signed.

The first meeting of the union and the employers in the children's dress industry to negotiate a new contract will take place on December 4, 1975. We hope to reach a satisfactory agreement in that industry as well.

With the climate in the city, state and nation being at low-ebb due to the many problems confronting us including the present Nixon appointed Ford Administration in Washington, negotiations in all segments of the ladies' apparel industry are long, tough and arduous. The union is determined to get the best possible

contract for our members to enable them to cope with double digit inflation, periodic lay-offs and a rising cost of living.

Brother Dolgen reported on his double dedication trip to Israel. The delegation consisted of Honorary President Stulberg and Mrs. Stulberg, Mrs. Falikman, wife of our late Manager and Vice President Moe Falikman and the charming first lady of Local 10, Mrs. Selma Dolgen.

The delegation was on a noble and inspiring mission to dedicate a hospital and a psychiatric out-patient clinic in Israel which will serve all people regardless of race, color or creed when they are sick or need psychiatric help. The Louis Stulberg Hospital was dedicated to our Honorary President Louis Stulberg and the Psychiatric Out Patient Clinic was dedicated to the memory of Vice President Moe Falikman.

These were solemn and touching ceremonies for they gave evidence of the great contribution and inspiration both these men who loved Israel to the highest degree dedicated themselves. Brothers Stulberg and Falikman were involved in the struggle to create a State of Israel for the better part of their lives.

It is not surprising that Honorary President Stulberg and Vice President Dolgen and the entire delegation received the red carpet treatment from the highest officials. They were honored by the most distinguished members of the Israeli Government. They visited with former Premier Golda Meir and the officials of Histadrut. This was due to the high esteem in which our local and our International is held and for the many contributions which our members have made and are making to preserve, protect and maintain the only democracy in the Middle East, the great State of Israel.

Upon motion made and seconded, the Manager's report was adopted.

Upon motion made and seconded, the meeting was adjourned.

Respectfully submitted,

Nat Klein, Secretary
Executive Board

ILGWU

SOL C. CHAIKIN
PRESIDENT
GENERAL SECRETARY-TREASURER

WILBUR DANIELS
EXECUTIVE VICE PRESIDENT

S. HOWARD MOLISANI
FIRST VICE PRESIDENT

DAVID DUBINSKY
LOUIS STULBERG
HONORARY PRESIDENTS

GENERAL EXECUTIVE BOARD
SHELLEY APPLETON
MORRIS BIALIS
NICHOLAS S. BONANNO
ISRAEL BRESLOW
SIMON BRESNER
ABE DOLGEN
DAVID GINGOLD
C. DL GREENE
MURRAY GROSS
SOL HOFFMAN
MATTIE JACKSON
SAM JANIS
EDWARD KRAMER
DOUGLAS LEVIN
HENOCH MENDELSUND
SALVATORE NOTO
JULIUS RAMIREZ
WILLIAM ROSS
EDWARD SCHNEIDER
MATTHEW SCHOENWALD
FREDERICK SIEMS
CORNELIUS WALL

Decision of General Executive Board, ILGWU, on Charges by Abe Dolgen against Tomas Rosario, Ovidio Vega and Raymond Cabel

Although the three accused members of Local 10 have failed to utilize their right under the ILGWU Constitution to appeal to the full General Executive Board of the ILGWU (GEB), from the attached decision of its Appeal Committee, the GEB, on its own motion, has reviewed that decision, pursuant to its authority under Article 23, Section 5, subd.(d), of said Constitution.

It is the decision of the GEB that because of the special circumstances surrounding the case, and the fact that the charges have already been heard twice by the Executive Board of Local 10, the charges shall be reheard de novo by a Trial Committee of Local 10, under the following conditions:

1) The Trial Committee shall be composed of rank-and-file members of Local 10 and shall consist of five (5) members and two (2) alternates selected by the membership of Local 10 at the next general membership meeting of the Local. Persons serving on the Trial Committee shall not have previously been involved in hearing the charges or in making the charges or in defending against them.

2) The Trial Committee shall select one of its members as Chairman. It shall also select a Secretary from among its members who shall prepare the official minutes of the hearing which shall be filed in the offices of Local 10. The official minutes or true copies thereof shall be made available for inspection in the offices of Local 10 by either the charging party or the accused upon their written request therefor. True copies of the minutes shall be furnished if so requested in writing.

3) Should the Trial Committee find the accused or any of them guilty, any penalty which might be imposed shall not include disqualification as a candidate for Union office.

BEST COPY AVAILABLE

General membership meeting of Local 10, ILGWU.

At the Statler-Hilton Hotel
33rd. St. and 7th Avenue.
New York, N.Y.

November 24, 1975

Brother Chairman ~~Emilio Boldino~~, Brother Secretary Nat Klein, brothers officers of Local 10 and Brothers members.

On behalf of brothers Ovidio Vega, Raymond Cabel and myself, Tomas Rosario, we object to the unfair and undemocratic procedure used by Local 10, for the election of the Trial Committee to hear and make decisions in the matter of the charges preferred by manager Abe Dolgen against Ovidio Vega, Raymond Cabel and Tomas Rosario.

Members have not been informed properly to attend this general membership meeting of Local 10. On previous Local 10 membership meetings the members have been informed by a letter sent by Local 10 and signed by manager Abe Dolgen.

The fact that only in the Justice printed in english is published the date for this meeting, that does not mean that all the members of Local 10 have been informed properly to attend this meeting. We want to bring to your attention that the date for this meeting has not been published in the Justice printed in Italian and Spanish. Also that in the Bulletin Board of Local 10 the date of September 24 meeting was not changed until last Tuesday November 17, 1975.

This shows very clear the intentions of Local 10 to have a small attendance at this meeting and to deprive the members of their equal rights, and to control and maneuver this meeting.

Every member of a labor organization shall have equal rights and privileges within such organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings.

Tomas Rosario
Ledger #26233

David Spitzer
79-11 149TH ST.
FLUSHING, N.Y. 11367
October 27, 1975

copy to:
Nat Klein Secy Exec Bd.
Local 10 ILGWU
218 W. 40TH ST.
N.Y., N.Y. 10018

copy to:
James Lipsig, secy
GEB appeals Committee
1710 Broadway
N.Y., N.Y. 10019

copy to:
Sol Chaikin
PRES ILGWU
1710 BROADWAY
N.Y. N.Y. 10019

Dear Sirs + Brothers,

We, the undersigned, request true copies of the official minutes of Local 10 membership meeting dated Feb. 10, 1975.

We visited your (Nat Klein) office Monday Oct. 27, 1975 and requested to inspect said minutes. You (Nat Klein) advised us to return after 12 noon of the same day to inspect said minutes. Upon returning at 12:15 PM, you told us to write you a letter. This is nothing but harassment and a runaround which we have had to contend with from the Officialdom of Local 10.

We also request true copies of the Feb. 25, 1975 executive bd minutes sitting as a grievance Committee in the trial of Ovida Vega, Tomas Rosario and Raymond Cabel and true copies of Local 10 Regular membership meeting of May 19, 1975 as previously requested and denied by Abe Dolgen in letter dated 7/21/75

The above are vital evidence in our appeal to the GEB appeal Committee in Charges against Nat Klein & Enzo Baldino. Fraternally,

Raymond E Cabel #25777

David Spitzer Local #20

EXHIBIT 4

JA 224

AMALGAMATED LADIES' GARMENT CUTTERS' UNION

LOCAL 10 ILGWU

218 WEST 40th STREET NEW YORK, N.Y. 10018 • AREA CODE 212 695-0850

ABE DOLGEN
Manager-Sec'y

WILLIAM WEISS
Assistant Manager

NAT KLEIN
Sec'y-Executive Board

Emil Schlesinger, Counsel

November 6, 1975

Mr. David Spitzer
79-11 149th Street
Flushing, N.Y. 11367

Dear Mr. Spitzer:

Your letter of October 27, 1975, to Nat Klein, Secretary-Executive Board of Local 10, I.L.G.W.U., and to others has been referred to me, as attorney for Local 10, for attention and reply.

Local 10 has no objection to your inspection of the minutes of it's Membership Meetings held on February 10, 1975 and May 19, 1975. Since Mr. Klein, who is the custodian of the minutes' book, is on vacation and will not return until late November 17, 1975, the aforesaid minutes will be made available for your inspection on November 18, 1975, at 2:00 P.M. at Mr. Klein's office. I shall also be present at that time.

With respect to the February 25, 1975, minutes of the Executive Board of Local 10 sitting as a Grievance Committee, these are involved in the complaint which Burton H. Hall, Esq., attorney, filed against Local 10 and others on behalf of Messrs. Rosario, Vega and Cabel in the United States District Court for the Southern District of New York. Since this matter is in litigation, it is, in my view, highly improper for either you or Mr. Cabel to communicate with Local 10 or Local 10 to communicate with either you or Mr. Cabel concerning it. As attorney for Local 10, I will reply to any communications in regard to any matter in litigation received from Burton H. Hall, Esq., who represents Messrs. Rosario, Vega and Cabel.

On October 8, 1975, you and Mr. Cabel requested a copy of the minutes of the September 22, 1975, Special Trial Committee hearing on the charges filed by both of you against Messrs. Klein and Baldino in order "to make a proper appeal from the decision rendered against them to the General Executive Board Appeal Committee". These were sent to you on October 20, 1975.

Very truly yours,

Emil Schlesinger, Counsel

cc: Raymond E. Cabel
2190 Brigham Street
Brooklyn, N.Y. 11229

Burton H. Hall, Esq.
401 Broadway
New York, N.Y. 10013

BURTON H. HALL
ATTORNEY AND COUNSELLOR AT LAW
401 BROADWAY
NEW YORK, N. Y. 10013
431-9114

EXHIBIT 5

November 10, 1975

Neil Schlesinger, Counsel
Amalg. Ladies' Garment Cutters Union, Local 10
Int'l Ladies' Garment Workers' Union
218 West 40th Street
New York, N.Y., 10018

Dear Mr. Schlesinger:

I have your letter to Mr. Spitzer, dated November 6, 1975, of which you have sent me a copy. In it, you indicate your preference for writing to me, instead of Mr. Spitzer or Mr. Cabel, in connection with anything even remotely relevant to the case of Rosario v. Dolgen. While that position on your part is irreproachable, I am at a loss to understand by it what is wrong either with Mr. Spitzer or Mr. Cabel discussing it with an officer of Local 10, or vice versa. Nevertheless, since you prefer to correspond with me, I will reply on Mr. Spitzer's behalf.

Mr. Spitzer made three requests of Local 10:

(i) for the minutes of the membership meeting of February 10, 1975;

(ii) for copies of the minutes of the February 25, 1975 executive board meeting; and

(iii) for true copies of the membership meeting of May 19, 1975.

These requests follow previous requests, which had led to an apparent run-around. Mr. Spitzer says that on October 27, 1975 he had visited Mr. Klein's office and made the first request; He was told he could return at noon and "inspect" them; When he did return he was not allowed to inspect them, instead he was told to write a letter. He did write the letter demanded of him, to which you now reply, with the promise that, again, he can "inspect" the minutes though not for another week because Mr. Klein is on vacation. He would have to do so, of course, at Mr. Klein's convenience, during the middle of the day (2:00 p.m.), a time most inconvenient for a rank-and-file member. The same opportunity is offered him, by your letter, as to the May 19, 1975 minutes.

You seem to overlook the fact that Mr. Spitzer's [illegible] was for a copy of the minutes, not for an opportunity to

"inspect" them. Could it possibly be that the officers of Local 10 are afraid to let their members have copies of the minutes of their own membership meetings? What could they have to hide?

Mr. Spitzer also asked for the minutes of the February 25, 1975 executive board minutes; it is in connection with this request that you make your remarks about preferring to correspond with me. I can't understand why the fact that there is litigation concerning an intra-union proceeding should be a barrier to supplying a member with copies of the minutes of that proceeding. Nevertheless, I assume you have no objection to supplying me with a copy, so I hereby make request for the same, on behalf of Mr. Spitzer and the plaintiffs jointly. I also request copies of any other minutes of executive board or membership meetings bearing upon the charges and/or trials of Rosario, Vega and Cabel that are subject to discovery proceedings.

If you know of any reason why the material bearing upon theRosario case which you supply to me should not be made available to Mr. Spitzer, please advise me and I will be happy to consider it.

You note correctly, at the end of your letter, that Mr. Spitzer and Mr. Cabel had requested and received copies of the trial committee hearing on their charges against Messrs. Klein and Baldino. SInce no mention of these was made in Mr. Spitzer's letter, the discussion in yours would appear to be gratuitous. I am hopeful, however, that it indicates willingness on your part to supply Mr. Spitzer with copies of whatever other minutes (such as the May 19, 1975 minutes) which may have a beating on the charges against Klein and Baldino.

Very truly yours,

Ben Hall

EXHIBIT 6

JA 228

AMALGAMATED LADIES' GARMENT CUTTERS' UNION

LOCAL 10 ILGWU

218 WEST 40th STREET NEW YORK, N.Y. 10018 • AREA CODE 212 695-0850

ABE DOLGEN
Manager-Sec'y
WILLIAM WEISS
Assistant Manager
NAT KLEIN
Sec'y-Executive Board
Emil Schlesinger, Counsel

November 18, 1975

Burton Hall, Esq.
401 Broadway
New York, N.Y. 10003

Dear Mr. Hall:

I tried to reach you twice on the telephone yesterday but was unsuccessful. Although I left a message with your office for you to return my first call and was told during my second call that you had received my first message and that you would soon return and would be given my second message, you did not give me even the courtesy of a return call. I telephoned you again this morning. I was told you were not in. I left a message for you to return my call You failed to do so.

I had intended to tell you what I now write in reply to your letter to me dated November 10, 1975.

The original oral request of Messrs. Spitzer and Cabel to Mr. Klein was merely to examine the minutes of the membership meetings of Local 10 of February 10, 1975, and May 19, 1975. My letter to them stated that they could inspect them on Tuesday, November 18, 1975, at 2 P.M. and that I would be present at that time.

If that hour was inconvenient for them and if you had advised me in your letter what other time would be convenient,

I would have arranged to have the aforesaid minutes inspected at a time convenient to them and to me.

Since you did not advise me, I waited at the Local 10 office from 2 P.M. to 3 P.M. today for Messrs. Spitzer and Cabel to appear. They did not do so.

Specifically, in answer to the points raised in your letter, I wish to inform you that it is not the practice of Local 10 to make or hand out copies of the minutes of its membership meetings, and I don't know of any provisions in the law which requires it to do so. The minutes are open for inspection to two or three members of Local 10 a day, upon reasonable notice, at a reasonable hour during the day when the office of Local 10 is open for business.

So far as concerns a copy of the minutes of the February 25, 1975 Executive Board Local 10 meeting sitting as a Grievance Committee on charges preferred by Dolgen against Cabel, Rosario and Vega, which Messrs. Spitzer and Cabel did request and which you urge to be given, I believe it to be the better part of wisdom not to give any copies of these minutes to anybody. The Grievance Committee decision for the first time was reversed by the GEB Appeal Committee and remanded for a new trial. The new trial which was subsequently held was reversed by the GEB itself at its meeting on October 8, 1975, and the charges remanded for a new trial by a trial committee elected by the membership of Local 10 for a new hearing. The election will take place Monday, November 24, 1975.

I believe that giving minutes which set forth the particulars of either of the former trials before the Grievance Committee of Local 10 would be highly prejudicial to Messrs. Cabel, Rosario and Vega and not in the best interests of Local 10 and its members. If copies of these minutes should be given to Messrs. Cabel and Spitzer or to you and should be reproduced and handed out to members of Local 10, some of whom may be elected to serve on the Trial Committee or handed out to members of the Trial Committee after they have been elected, they would be extremely prejudicial.

The proceedings at the Executive Board of Local 10 sitting as a Grievance Committee with respect to the charges filed by Dolgen individually against Cabel, Rosario and Vega, are as dead as a "dodo" since they have been mooted by the decision of the GEB on October 8, 1975. I prefer, in the interests of a fair new trial, and have so advised Mr. Klein, that they remain so.

Very truly yours,

Emil Schlesinger, Counsel

Tomas Rosario
1291 Spofford Ave. Apt. 6-B
Bronx, N.Y., 10474

December 9, 1975. JA 230

EXHIBIT 7

Mr. Nat Klein
Secretary Executive Board
Local 10, I.L.G.W.U.
218 West 40th Street
New York, N.Y., 10018

Dear Sir and Brother:

On Saturday, December 6, 1975, I received a certified letter dated December 4, 1975 and signed by Mr. Harold Brodsky, ledger #16739, Secretary Trial Committee, informing me of the next trial which will be held on Thursday, December 18, 1975, at 6:30 P.M. in the Council Room of Local 10.

On Monday, December 8, 1975 and by registered mail No. 357128, I sent you a letter undated and signed by Ovidio Vega, Raymond Cabel and Tomas Rosario, requesting from you photostatic copy of five different sets of minutes in relation with the matter of the charges preferred by Manager Abe Dolgen against Ovidio Vega, Raymond Cabel and Tomas Rosario.

Attached to this letter is a photostatic copy, with the date of December 8, 1975 writen by me with ink, of the original undated letter sent to you on December 8, 1975 by registered mail No. 357128.

I want to clarify and correct my error of the undated letter sent to you on December 8, 1975, and I sincerely hope I did not cause you any annoyance.

Also, on behalf of brothers Ovidio Vega, Raymond Cabel and for myself, respectfully request your immediate reply to our letter requesting photostatic copy of the five different sets of minutes which are enumerated in detailed in our letter sent to you on December 8, 1975 and in the photostatic copy attached to this letter.

These minutes are necessary for us to have a fair opportunity to prepared and present a defense at the next trial that we have been summoned to appear and which will be held on Thursday, December 18, 1975, at 6:30 PM., in the Council Room of Local 10.

Fraternally,

Tomas Rosario
Ledger #26288

Enclosure

Tomas Rosario JA 231
1291 Spofford Ave., Apt. 6-B
Bronx, N.Y., 10474

December 8, 1975.

Mr. Nat Klein
Secretary Executive Board
Local 10, I.L.G.W.U.
218 West 40th Street
New York, N.Y., 10018

Dear Sir and Brother:

In the matter of the charges preferred by Manager Abe Dolgen on February 10, 1975 and May 8, 1975 against Ovidio Vega, Raymond Cabel and Tomas Rosario, the undersigned request photostatic copies of the following minutes:

1. Photostatic copy of the minutes taken by brother Nat Klein at the trial held on Tuesday, February 25, 1975.

2. Photostatic copy of the minutes taken by James Lipsig at the hearing held on Tuesday, April 8, 1975 in the Council Room at the General Office, 1710 Broadway.

3. Photostatic copy of the minutes taken by brother Milton Stric'ler at the trial held on Wednesday, May 21, 1975.

4. Photostatic copy of the minutes taken by James Lipsig at the hearing held on Tuesday, July 22, 1975, in the Council Room at the General Office, 1710 Broadway.

5. Photostatic copy of the minutes taken by brother Nat Klein at the Local 10 General Membership Meeting held on Monday, November 24, 1975, at the Statler-Hilton Hotel, in the matter of the election of the Trial Committee by the membership of Local 10, by Decision of the General Executive Board, I.L.G.W.U., rendered October 8, 1975.

These minutes are necessary for the undersigned to have a fair opportunity to prepared and present a defense at the trial which will be held on Thursday, December 18, 1975, at 6:30 P.M., in the Council Room of Local 10.

Please, reply to us inmediately, by mail to Tomas Rosario, at the address given at the head of this letter.

Fraternally,

Ovidio Vega
Ovidio Vega
Ledger #17937

Raymond Cabel
Raymond Cabel
Ledger #25777

Tomas Rosario
Tomas Rosario
Ledger #26238

JA 232
EXHIBIT 8

AMALGAMATED LADIES' GARMENT CUTTERS' UNION

218 WEST 40th STREET NEW YORK, N.Y. 10018 • AREA CODE 212 695-0850

ABE DOLGEN
Manager-Sec'y

WILLIAM WEISS
Assistant Manager

NAT KLEIN
Sec'y-Executive Board

Emil Schlesinger, Counsel

December 10, 1975

Burton Hall, Esq.
401 Broadway
New York, N.Y. 10013

Dear Mr. Hall:

Yesterday, Local 10 received an undated letter subsequently dated December 8, 1975, a photostatic copy of which is enclosed, signed by its members Rosario, Vega and Cabel in connection with the new trial ordered by the General Executive Board of the ILGWU on October 8, 1975, on the charges preferred against them by Dolgen, a member of Local 10. The letter requests response only to Tomas Rosario. The enclosed letter has been turned over to me as attorney for Local 10 for attention and reply.

Since you are the attorney for Rosario, Vega and Cabel in the action which you brought on their behalf in the United States District Court for the Southern District of New York and in connection with which I have served you with a motion to dismiss, returnable on December 19, 1975, I deem it to be within the spirit of "The Lawyer's Code of Professional Responsibility" to send my reply to you instead of to them (see my letter to Mr. Spitzer dated November 6, 1975, a copy of which I sent you and receipt of which you acknowledged to me in your letter of November 10, 1975). However, I have sent copies of this letter to each of them.

The enclosed photostatic copy of the undated letter subsequently dated December 8, 1975. of Rosario, Vega and Cabel to Local 10 again asks for the minutes of the meeting of the trial held on February 25, 1975.

In addition, it asks for: (a) the minutes of the General Executive Board Appeal Committee hearing held on April 8, 1975, which resulted in the reversal of the decision rendered against your clients; (b) the minutes of the meeting of the trial held on May 21, 1975; (c) the minutes of the General Executive Board Appeal Committee hearing held on July 22, 1975, which resulted in the affirmance of the decision rendered against your clients: and (d) the minutes of the Membership Meeting held on November 24, 1975.

In your letter to me dated November 10, 1975, you requested copies of all "minutes of Executive Board or Membership Meetings bearing upon the charges and/or trials of Rosario, Vega and Cabel" and that if I know of any reason "why the material. . . should not be made available" to advise you and that you "will be happy to consider it".

I wrote you on November 18, 1975 and stated my position. I stand on it. It applies to the additional materials requested in the enclosed letter.

Not having heard from you (except by a return telephone call late on November 18, 1975, after my letter dated that day had already been mailed to you and from the copy of which I read to you and your statement that you understood my position) I take it that you do not disagree with my position that Local 10 does not have to supply to Rosario, Vega and Cabel the information requested.

Moreover, Local 10 does not take minutes of the General Executive Board Appeal Committee. It received a photostatic copy of the decision which was received by your clients.

With respect to the minutes of the Membership Meeting of Local 10 held on November 24, 1975, I stand by what I said in my letter to you dated November 18, 1975: "I wish to inform you that it is not the practive of Local 10 to make or hand out copies of the minutes of its membership meetings and I don't know of any provisions in the law which requires it to do so. The minutes are open for inspection to two or three members of Local 10 a day, upon reasonable notice, at a reasonable hour during the day when the office of Local 10 is open for business." If you will advise me when it will be convenient for your clients to inspect the minutes of the Membership Meeting of Local 10 held on November 24, 1975, I shall make arrangements for them to do so, provided that the inspection is held at a reasonable hour during the day when the office of Local 10 is open for business.

I cannot for the life of me see how any of the documents requested are relevant in a new trial or necessary to give your clients

"a fair opportunity to prepare and present a defense at the trial" which will be held on December 18, 1975, by a new trial committee duly elected by the membership of Local 10 present at the Membership Meeting of the Local on November 24, 1975, as required by the decision of the General Executive Board of the ILGWU dated October 8, 1975.

Very truly yours,

Emil Schlesinger. Counsel

EM:sm
opeiu:153
encl.
cc: Tomas Rosario. #26288
Raymond Cabel. #25177
Ovidio Vega. #17937

EXHIBIT 9

Tomas Rosario
1291 Spofford Ave. Apt. 6-B
Bronx, N.Y., 10474

December 22, 1975.

Mr. Nat Klein
Secretary Executive Board
Local 10, I.L.G.W.U.
218 West 40th Street
New York, N.Y., 10018

Dear Sir and Brotner:

In the matter of the charges preferred by Manager Abe Dolgen on February 10, 1975 and May 8, 1975 against Ovidio Vega, Raymond Cabel and Tomas Rosario, the undersigned request photostatic copies of the following minutes:

1. Photostatic copy of the minutes taken by brother Nat Klein at the trial held on Tuesday, February 25, 1975.

2. Photostatic copy of the minutes taken by brother Milton Strikler at the trial held on Wednesday, May 21, 1975.

3. Photostatic copy of the minutes taken by brother Nat Klein at the Local 10 General Membership Meeting held on Monday, November 24, 1975, at the Statler-Hilton Hotel, in the matter of the election of the Trial Committee by the membership of Local 10, by Decision of the General Executive Board, I.L.G.W.U., rendered October 8, 1975.

4. Photostatic copy of the minutes taken by brother Harold Brodsky, Secretary of the Trial Committee, at the hearing held on December 18, 1975.

These minutes are necessary for the undersigned to have a fair opportunity to prepare and present a defense at the next trial which will be held in three weeks, according to decision of adjournment by brother David Mittleman at the trial held on December 18, 1975.

Please, reply to us immediately, by mail to Tomas Rosario, at the address given at the head of this letter.

Fraternally,

Tomas Rosario
Ledger #26286

Raymond Cabel
Ledger #25777

Ovidio Vega
Ledger #17937

JA 236
EXHIBIT 10

AMALGAMATED LADIES' GARMENT CUTTERS' UNION

LOCAL 10
I.L.G.W.U.

218 WEST 40th STREET NEW YORK, N.Y. 10018 • AREA CODE 212 695-0850

ABE DOLGEN
Manager-Sec'y

WILLIAM WEISS
Assistant Manager

NAT KLEIN
Sec'y-Executive Board

Emil Schlesinger, Counsel

December 24, 1975

Mr. Tomas Rosario
1291 Spofford Avenue Apt 6B
Bronx, N.Y. 10474

Dear Brother Rosario:

I have your letter of December 22, 1975.

With reference to items 1 and 2, I enclose photostatic copies of letters sent by Local 10's attorney, Emil Schlesinger, to Burton H. Hall, Esq., the lawyer for you and Brothers Vega and Cabel. A copy of the December 10, 1975 letter was also sent to the three of you by Mr. Schlesinger and you are well aware of Local 10's position with respect to these two items. These minutes are not available to anybody since the General Executive Board ordered a new trial on the merits. They are not necessary for you to prepare a defense since you do not know who will be the witnesses in support of Brother Dolgen's charges against you or what their testimony will be.

With respect to item 3, a copy of the minutes of the Membership Meeting of November 24, 1975 is annexed as Exhibit 13 to my reply affidavit in the case which you and Brothers Vega and Cabel commenced in the federal court. You may obtain a copy from Mr. Hall. The letter of Local 10's attorney dated December 10, 1975 (a copy of which you and Brothers Cabel and Vega received) made it abundantly clear that Local 10 would make these minutes of November 24, 1975 available for inspection by any of you if Mr. Hall would advise me of

what date was convenient for you. But, all three of you refused to avail yourself of the opportunity to do so.

With respect to item 4, a photostatic copy of the minutes of the Trial Committee taken by Harold Brodsky, Secretary of the Trial Committee, on December 18, 1975, will be forwarded to you by the Secretary of the Trial Committee.

Fraternally yours,

Nat Klein

Nat Klein, Secretary
Executive Board

NK:sm
opeiu:153
enclosures
cc: Ovidio Vega
Raymond Cabel

to tape the hearing. It might not be an accurate record of the proceedings.

JA238

Statement to the Executive or
Trial Board of Cutters' Local 10

The undersigned hereby appear at the hearing schedule in regard to charges filed against us by Abe Dolgen, Manager of Local 10.

Each of the undersigned objects to the presence or participation, on any trial body hearing such charges, of Nat Klein, a close political ally of the said Dolgen who, in addition to his political prejudice against the members here charged, was a participant in the events on which the said Dolgen bases his charges.

Each of the undersigned further objects to the presence or participation on any such trial board of any of the present members of the Local 10 Executive Board, on the ground that each such member of the Executive Board is and long has been a close political ally (English translation: stooge) of Messrs. Dolgen and Klein and is politically prejudiced against each of the members charged.

Each of the undersigned demands the right to bring a tape recorder to any trial or disciplinary hearing and record the proceedings thereon, on the ground that the right to make a full and accurate record of proceedings is inherent in the concept of a fair trial.

As to the charges. Each of the undersigned denies any violation of any provision of the constitution of the ILGWU. In particular: each of the undersigned categorically denies that he, or any of the members charged together with him, either "took possession" of any Local 10 office, or "obstructed" or "interfered" with any of the business of Local 10, or "interfered" with the functioning of any business agent or officer, or refused any orders by officers of Local 10. Each of the undersigned categorically denies that Brother Ray Cabel, or any other of the undersigned, "sought" or attempted to provoke physical action against anyone at any time, or performed any acts toward such an end.

Having some familiarity with the Moscow-style "trials" conducted by Local 10's Executive Board, none of the undersigned expects a fair trial on these charges; however, each is determined to exercise and exhaust, in good faith, all reasonable remedies available to him in regard to the disciplinary harrassment being carried out against him by Dolgen and his allies. Each of the undersigned protests, however, that this campaign of harrassment -- of which the charges are part -- is an attempt to intimidate and coerce rank-and-file members of Local 10 in the exercise of their union rights, and an attempt to persecute those rank-and-file members who have protested against the widespread violations of our collective bargaining agreement committed by employers in apparent collusion with Dolgen and other bureaucrats allied with him.

The said Dolgen has previously filed false charges against two of the undersigned, with the aim of causing their arrest and harrassment. When the time came to come forward, substantiate his charges and swear to a complaint, however, Dolgen chickened out: he wasn't man enough to come forward and air his charges in an open forum. Instead he seeks to use the kangaroo-court of stooges provided by Local 10's Executive Board to persecute his rank-and-file opponents on the same phoney charges.

Tomas Rosario
Ledger #26288

Ovidio Vega
Ledger #17237

Raymond Cabel
Ledger #25777

February 25, 1975.

BEST COPY AVAILABLE

recorder at the hearing because the aforementioned documents clearly show

JA 239

May 21, 1975

Statement to the Trial Board of Local 10

The undersigned appear at the hearing scheduled in regard to charges filed against us by Abe Dolgen, Manager of Local 10.

Each of us denies the charges against us. Neither of the undersigned, at any time, either "took possession" of any Local 10 office, or "obstructed" or "interfered" with Local 10's business or the functioning of any business agent or officer, or committed any other violation of the ILGWU constitution. Each of the undersigned further denies that Brother Ray Cabel, or any of the undersigned, at any time "sought" or attempted to provok e physical action against any person at any time, or performed any acts toward such an end.

Each of the undersigned objec . to the presence or participation on the Trial Board of any person who has pre-judged or previously judged us, or any of us, concerning the same or related charges against us. In particular, we object to the presence on the Trial Board of any person who participated in, or was present at, the previous hearing held in connection with these charges.

As the undersigned prviously have advised the Executive Board, we have too much familiarity with the Moscow-style "trials" conducted by Local 10's officialdom to expect a fair trial on the charges filed by Dolgen against us. We note that Dolgen was not man enough to show up in criminal court, where he previously had filed substantially the same charges against the two of us. Lacking the courage to appear in a public forum, he seeks instead, through a kangaroo-court manipulated and controlled by him, to persecute us and to thereby intimidate other members in their free exercise of their rights as Union members.

No honest or accurate record was taken of the previous hearing. The undersigned were even denied access to and use of the fraudulent and grossly inaccurate record that was taken by brother Nat Klein. Accordingly, the undersigned again demand the right to tape record the entire proceedings, in order to make a true and accurate account and record of what is said and done.

Tomas Rosario
Ledger #26288

Ovidio Vega
Ledger #17937

Raymond Cabel
Ledger #25777

EXHIBIT 12

EXHIBIT 13

Tomas Rosario
1295 Spofford Avenue Apt. 18-A
Bronx, N.Y., 10474
March 10, 1975

GEB Appeal Committee
Int'l Ladies' Garment Workers' Union
1710 Broadway
New York, N.Y., 10019

RE: Appeal of Tomas Rosario, Ray Cabel and Ovidio Vega, members of Cutters' Local 10, from decisions of the Local 10 Executive Board dated Feb. 28, 1975 (mailed March 3, 1975), on charges filed by Local 10 Manager Abe Dolgen.

Dear Sirs and Brothers:

I hereby appeal on my own behalf and on behalf of Brothers Ray Cabel and Ovidio Vega from the decisions of the Local 10 Executive Board dated February 28, 1975 declaring each of us guilty of the charges filed by Manager Dolgen of Local 10. Copies of the decisionsappealed from are enclosed herewith.

The charges themselves (as well as the "trial" and decision thereon) are simply a further step in the Dolgen clique's campaign of repression and persecution of all rank-and-file members who oppose that clique. As you well know -- since each of you, as one of the boss bureaucrats of ILGWU, has long connived in, participated in and practiced this same Moscow-style persecution of "dissidents" -- this campaign of repression and persecution has continued for a long time.

These particular charges derive from Dolgen's invitation to each of us, on January 29, 1975, to enter his office. We entered his office, in response to such invitation, and protested to him about the unfair and discriminatory manner in which job referrals are distributed by Local 10. We asked that job referrals be handled on a non-discriminatory basis instead of on the basis of political favoritism. After listening to us for a while, Dolgen whispered something to Assistant Manager William Weiss. Dolgen, WEiss, Secretary Nat Klein and three business agents then left the room. Brother Cabel remained awhile and then left; Brother Vega and myself remained. Dolgen thereafter returned with two policemen. On Dolgen's demand, the two policemen arrested us. Arraignment was set for February 10, 1975 but Dolgen had cold feet by the time that date arrived: he didn't dare appear in court to sign a complaint. So Dolgen thought up the charges against us instead. This way he could be the judge as well as the charging party.

But when the time came for "trial" of his charges against us,

Chairman of the trial body and participated in its decision. He allowed all the business agents to participate as members of the trial body, including Pastel, Zionsky and Glick, even though they testified against us at that same "trial" as witnesses on behalf of Dolgen. (None of the business agents are members of the executive board.) After we had been dismissed from the room, Dolgen continued the trial in our absence: he was testifying as we left. In short, the trial body was prejudiced against the charged persons and/or persons so prejudiced were members of it; the charged persons were excluded from at least a portion of the "trial" and thereby denied the right to confront and cross-examine the witnesses who testified against them in their absence; and the composition of the trial body violated the International constitution's requirements. Moreover, the decision is unlawful on its face, since it purports to "suspend" ffom "all Union activities three members who remain members (i.e., are not suspended from membership), thereby infringing their rights of membership.

We make this appeal in a good faith attempt to exercize and exhaust all hearing and appeal procedures reasonably available to us within the labor organization. If any error has been committed by us in submitting it, or if any prerequisite or preliminary requirement has been omitted, or if any further or different appeal or hearing procedure is available to us, or to any of us, we request that we be notified immediately, in writing, by mail to the address given at the headof this letter.

Fraternally,

Concurred in:

RAY GABEL

OVIDIO VEGA

AMALGAMATED LADIES' GARMENT CUTTERS' UNION

218 WEST 40th STREET NEW YORK, N.Y. 10018 • AREA CODE 212 695-0850

ABE DOLGEN
Manager-Sec'y

WILLIAM WEISS
Assistant Manager

NAT KLEIN
Sec'y-Executive Board

Emil Schlesinger, Counsel

February 4, 1976

Mr. Tomas Rosario
1291 Spofford Avenue Apt. 6B
Bronx, N.Y. 10474

Dear Sir and Brother:

Enclosed is a copy of the decision by the Trial Committee rendered on January 29, 1976 on the charges brought by Brother Abe Dolgen against you, and Brothers Ovidio Vega and Raymond Cabel. The decision speaks for itself.

You have requested "true copies of the official minutes of the trial hearing". I am enclosing a photostatic copy of the complete record in the case as filed with me by the Secretary of the Trial Committee.

If you wish to appeal you may do so under the procedures of Article 23 of the ILGWU Constitution.

Fraternally yours,

Nat Klein, Secretary
Executive Board

NK:sw
oeiu/153
encl.

Exhibit 15(b)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JA 243

TOMAS ROSARIO, OVIDIO VEGA and RAY CABEL,	:	76 Civ. 3204 (CBM)
Plaintiffs,	:	AFFIDAVIT
-against-	:	
AMALGAMATED LADIES' GARMENT CUTTERS' UNION, LOCAL 10 OF I.L.G.W.U. and INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO,	:	
Defendants.	:	

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

DAVID MITTLEMAN, being duly sworn, deposes and says:

I am a rank and file member of Amalgamated Ladies' Garment Cutters' Local 10, which is affiliated with the International Ladies' Garment Workers' Union, AFL-CIO. I have been a member of Local 10 for about 35 years. I do not occupy any office or position of any kind whatsoever in Local 10.

I am employed as a cutter-marker-grader by Sue Brett, Inc., 1400 Broadway, New York, New York, and have been so employed by it for the last 20 years.

I make this affidavit in opposition to the plaintiffs' motion for a temporary injunction and in support of Local 10's motion for summary judgment. I have read the plaintiffs' Complaint and the affidavit of Tomas Rosario in support of the motion for an injunction sworn to July 8, 1976, and I know the contents of both documents.

As a member of Local 10, I attended a membership meeting of the Local on November 24, 1975. I saw a notice of the meeting on the bulletin board at the offices of Local 10 at least 2-1/2 weeks before the date of the meeting, and the notice may have been posted on the bulletin board even before I saw it. I also saw the notice of the meeting in the October 15, 1975-November 1 and in the November 15 issues of "Justice," the ILGWU publication. I attach hereto as Exhibit 1 the notices which appeared in "Justice".

There were over 200 members present at the membership meeting on November 24, 1975. It was during the slow period in the industry when there was much unemployment and when those who worked received hardly any overtime. In addition, November 24th was a very cold day. Those who worked that day finished at approximately 4:00 p.m., and members who had worked on that day were not inclined to wait around for the meeting which was scheduled to start at 7:00 p.m.

It is untrue that members of Local 10 received notices of membership meetings by letter. Only when a special meeting is called, or when a meeting is held in connection with nominations and elections of officers are letters sent out to members. In all other cases, notices or announcements are put on the bulletin board in Local 10 and in the issues of "Justice" prior to the date of the meeting. In any event, Rosario and Cabel knew about the meeting and were present at the meeting on November 24th. What took place at the meeting is accurately reflected in the minutes of the meeting which is annexed to the affidavit of Nat Klein, which, as I understand it, is being submitted simultaneously herewith.

I categorically deny the statements in Paragraph 8 of the Complaint that Local 10 failed to give adequate notice of the membership meeting of November 24, 1975 and that that meeting or any other meeting of Local 10 was or is ever dominated by the incumbent officers of Local 10.

Rosario, one of the plaintiffs, read a statement objecting to the holding of the meeting and the election of a trial committee. He was answered by the manager of Local 10. I also remember that Brother Cabel was recognized and began to talk about the merits of the charges which had been preferred against him and upon which he was to stand trial together with the other two plaintiffs. He was called out of order. He took no appeal from the Chair's ruling.

The following 7 members of Local 10, each one of whom is a rank and file worker and holds no office in Local 10, were nominated for members of the Trial Committee:

Harold Brodsky
David Mittleman
Sam Boccasini
Murray Edwin
Flemmie Adams
Dave Sirota
Jerry Seidband

The Chairman asked for further nominations. None were offered. Upon motion made, seconded and passed, the membership voted that the 5 nominees receiving the highest votes should constitute the Trial Committee and the 2 with the lowest votes would constitute the alternates.

Tellers were appointed to count the vote. They included Brothers Kotler and Kurtz, who are known to be leaders of the opposition in the Local. They refused to serve.

The first 5 of the above-anmed persons received the highest votes and were declared elected members of the Trial Committee; the last 2 were declared elected as alternates.

I hereby categorically deny those parts of Paragraphs 8, 9 and 10 of the Complaint which states that those nominated and elected as members and alternates of the Trial Committee "were selected and hand-picked by the Manager of Local 10 and others allied with him," or that any of them "was and is allied with the incumbent officialdom of Local 10" and are "biased

against each of the plaintiffs because of the plaintiffs' opposition to the officers or for any other reason. I hereby aver that none of us entertain any bias or prejudice against any of the plaintiffs. We may not always agree with their views, but respect their right to have and to express them. I specifically deny that the plaintiffs objected to the election of the Trial Committee by an open hand vote.

The Complaint containing the aforementioned allegations is not verified. The affidavit in support of the motion for a temporary injunction is sworn to by Brother Rosario and not by any of the other plaintiffs, but even he did not dare declare the statements in his affidavit that are alleged in Paragraphs 8, 9 and 10 of the Complaint, knowing full well that they were untrue; that such statements, if made by him in an affidavit, would constitute perjury.

After the meeting, the Trial Committee, in writing, elected me to be its Chairman and Harold Brodsky to be its Secretary to take the official minutes of the hearing of the Trial Committee. A copy of that document signed by each of the members and alternates of the Trial Committee is annexed to the affidavit of Harold Brodsky submitted simultaneously with my affidavit.

Meetings of the Trial Committee were held upon notices given to all parties involved in the disciplinary proceedings by the Secretary who recorded the official minutes. All of these are attached to the affidavit of Harold Brodsky.

A short time after I was elected as Chairman of the Trial Committee, I visited Mr. Nat Klein, the Secretary-Executive Board, and requested him to give me a copy of the charges which the Trial Committee was elected to hear and determine, a copy of the Constitution of the ILGWU, and a copy of the decision of the General Executive Board of the ILGWU dated October 8, 1975. He did so. A copy of the charges is annexed hereto as Exhibit 2. A copy of the GEB decision of October 8, 1975 is annexed hereto as Exhibit 3. I inquired whether a room would be made available at Local 10's office on December 18, 1975, beginning at 6:30 p.m., for the hearing on the charges. He said he would arrange it.

Thereupon, I requested Harold Brodsky, who had been elected as Secretary of the Committee, to send notices of the hearing to the accuser and to the accused. He did so. I understand that a copy of the notices is annexed to his affidavit which is being submitted to this Court simultaneously with this affidavit of mine.

The minutes of the hearing on the charges held on December 18, 1975, a copy of which is also annexed to the affidavit of Harold Brodsky, and the facts stated in the affidavit of William Harris, who acted as the lay attorney for the accuser, which I understand is also being submitted to the Court together with this affidavit, are true and correct in every respect.

When my attention was called by Brother Harris representing Brother Dolgen to the fact that the hearing was being tape recorded, he objected to it upon the ground that the decision of the General Executive Board on October 8, 1975, provided that the Secretary of the Trial Committee shall "prepare the official minutes of the hearing," I conferred with the other members of the Trial Committee, and, after a brief discussion with them in which it was pointed out that the accuser did not bring a tape recorder to record the hearing, that a tape recorder could be manipulated in various ways, such as stopping the recording when damaging testimony was offered against the party who is doing the recording, erasures made, or the tapes replayed on another tape and in the process of doing so eliminating portions originally taped which were unfavorable to the accused, and that the contentions could then be made by the accused that the tapes which had been tampered with were more reliable than the officials minutes taken by the Secretary, the Committee decided that I should rule that the tape recorder would have to be removed from the hearing room, and that the hearing cannot be taped. I announced this ruling. However, Brothers Rosario, Cabel and Vega, the accused, and their lay lawyers stated that they insisted upon tape recording the hearing and that they refused to remove the tape recorder from the hearing room. I again conferred with the members of the Trial Committee. -5-

It appeared to us that the defiance of the accused and the statements of Rosario and Cabel at the November 24th membership meeting which we attended and which we heard, that perhaps the accused were attempting to stall the holding of any hearing on the charges preferred against them. The members of the Trial Committee decided unanimously that the hearing be adjourned for three weeks for the purpose of giving the accused an opportunity to decide whether they will appear without a tape recorder and that, if they persisted in bringing a tape recorder on the adjourned date, the hearing will be held without them. I announced this decision and immediately adjourned the hearing.

Plaintiffs never asked for a court stenographer to record the hearing or offered to pay the expenses for it. The Constitution of the ILGWU, which is also the Constitution of Local 10, does not provide that a stenographer take the minutes of a disciplinary proceeding. In any event, the accused never made any request for any kind of stenographer to take the minutes of the hearing.

On December 24, 1975, I received a letter dated December 22, 1975, from Tomas Rosario, one of the accused, to which were annexed a two-page document dated December 18, 1975 headed "Statement to the Third Trial Committee to Try Us on Dolgen's Charges" signed by the three accused; a letter dated December 22, 1975, signed by the three accused addressed to Nat Klein, Secretary-Executive Board of Local 10; and a letter dated December 22, 1975, signed by the three accused, addressed to James Lipsig, Assistant Executive Secretary of the ILGWU. A photostatic copy of these papers, which are really self-serving statements, is annexed hereto as Exhibits 4-A, B, C and D.

It is interesting to note that in the accuseds' statement of December 18, 1975, in the th paragraph, they say:

> "Since we have been denied such right (at previous trials and proceedings) and expect to be denied the

> right to have a stenographer record the proceedings, we have not gone to the expense of hiring a stenographer on these occasions. However, each of us demands and insists upon the right to bring a tape recorder to record the proceedings thereon."

Upon the receipt of the aforesaid letter and documents, I immediately replied on December 24, 1975 to Brother Rosario's letter. A copy of my reply is annexed hereto as Exhibit 5 and speaks for itself.

Notice to the accused and accuser of the date of the adjourned hearing; i.e., January 8, 1976, with enclosures of the minutes of the hearing on December 18,1975, were mailed by the Secretary of the Trial Committee on December 26, 1975. Copies are attached to his affidavit. The second paragraph of his letter calls specific attention to the following:

> "The decision reached by the Trial Committee on December 18, 1975, was that you may not bring or use a tape recorder or any other electronic recording device at the hearing on January 8, 1976, or if the trial is continued, on any subsequent date. You are required to obey that ruling."

At the hearing on January 8th, the accused and their lay lawyers again appeared with a tape recorder and were asked by me to remove the tape recorder. They refused to do so and kept sitting in the hearing room with the tape recorder in operation.

It became evident to the members of the Trial Committee that the accused had determined not to abide by the ruling of the Committee, and that they insisted upon setting their own rules for the conduct of the hearing, and that, if their rules were not accepted, they would not permit the hearing ever to go on so that they would never be tried on the charges preferred against them.

After a short delay, the Committee left the accused sitting in the hearing room and I announced that the Committee would conduct the hearing in another room on Local 10's premises so long as the accused continued to maintain their position contrary to the ruling of the Trial Committee and insisted upon tape recording the hearing. The Trial Committee did go into

another room. It did not lock the door. It proceeded with the hearing. The accused were at all times welcome to come into the hearing room to which the Committee had adjourned by knocking on the door or opening the door of the room to which we adjourned, and to participate in the hearing by merely stating that they were ready to abide by the ruling of the Trial Committee not to tape record the hearing.

The statements in Paragraph 12 of the Complaint are false. The letter of Rosario to me dated December 22, 1975, and my answer to him dated December 24, 1975, proves the falsity. As a matter of fact, my letter of December 24, 1975, did not deny the accused "copies of official minutes of previous trials already conducted on the charges against them." What I said in my letter was

> "I cannot go into the question at this time of the minutes you require of Brothers Lipsig and Klein. Neither I nor the Trial Committee can make any ruling until we hear the arguments why these documents are necessary to prepare for a new trial and why the minutes have been refused."

So, too, is the statement in Paragraph 13 of the Complaint false. The accuseds' statement, dated December 18, 1975, first came to my attention when I received Rosario's letter of December 22, 1975, to which it was attached. In that statement they did not demand the right to make an accurate record of the proceedings by the use of a tape recorder. What they insisted upon was "our right to have these proceedings recorded by us on a tape recorder." What I have just said also applies to Paragraph 15 of the Complaint.

Paragraphs 14 and 16 of the Complaint are not true in that they allege that the Trial Committee "arbitrarily and without good reason" took the action which it did. The Trial Committee acted with great caution and understanding and with extreme fairness. It desired to adhere strictly to the decision of October 8, 1975 of the General Executive Board of the International Ladies' Garment Workers' Union; it had confidence in its own Secretary which it had elected; it did not want to risk the possibility that, if the accused were permitted

to tape the hearing, it might not be an accurate record of the proceedings. Nor did it want to risk the possibility that a hassle might develop later and the entire matter again be brought into court to determine the credibility of the tape against the official minutes of the Secretary.

Paragraph 17 of the Complaint is a disingenuous attempt to mistate what actually happened. Indeed what actually happened is best described not by what is alleged in the Complaint but what has been omitted from it. It was not the Trial Committee's fault, but the blame rests entirely with the accused who refused to abide by the ruling of the Trial Committee to whose jurisdiction they had submitted, and that, not the Trial Committee, but the accused denied to themselves, the right to do the various matters alleged in Paragraph 17 of the Complaint.

I deny that the Trial Committee through its Secretary failed to make an accurate record of the hearings. All of the minutes are annexed to Harold Brodsky's affidavit which is being submitted simultaneously with mine. It should be noted that, notwithstanding my statements in my letter to Rosario, dated December 24, 1975, I did order, among other things, that the letter of Brother Rosario to me dated December 22, 1975, and the enclosures referred to above be included in the minutes of the hearing held on January 8, 1976.

On January 28, 1976, Rosario wrote me a letter and in a postscript stated "I request that I be furnished with true copies of the official minutes of the trial hearing." Copy of this letter is annexed hereto as Exhibit 6.

Upon receipt of that letter I replied, on January 29th, and indicated that there were erroneous statements made in the first paragraph of his letter, that the minutes will be filed with the Secretary-Executive Board of Local 10, and that he undoubtedly would hear from him in the near future. Copy of my letter is annexed hereto as Exhibit 7.

The erroneous statements made in the Complaint and by Rosario in his letters to me of December 22, 1975 and January 8, 1976, confirms the wisdom of the ruling made by the Trial Committee not to permit a tape

recorder at the hearing because the aforementioned documents clearly show that Rosario instead of giving an accurate report was, in fact, giving a doctored version of what in fact really occurred.

As I stated, Rosario requested in his letter of January 28, 1976, "true copies of the official minutes of the Trial Hearing." On February 4, 1976, the Secretary-Executive Board of Local 10, with whom the minutes were filed, mailed Rosario a photostatic copy of the complete record of the case. He has had this record since the beginning of February 1976, yet in his affidavit in support of the motion for an injunction which is sworn to on July 8, 1976, he does not and cannot point to a single error in those minutes.

The statements made in Paragraph 22 of the Complaint are untrue. Speaking for myself and the Trial Committee, the decision of the Trial Committee had nothing to do with the expression of views, etc., as alleged in Paragraph 22. The simple fact is that the Trial Committee, although it found offensive the language Cabel used in the waiting room after he left the Manager's office on January 29, 1975, unanimously declined to sustain the specific charge alleged against Cabel.

I simply cannot understand how Rosario can assert in Paragraph 16 of his affidavit that, although he never was able to obtain the minutes of his previous trials, he can still assert in Paragraph 17 of his affidavit that these minutes, which he has never seen, "bear little relationship, if any, to what has actually happened in the proceedings."

As I sign this affidavit and now look back to the attitudes and positions taken by the accused, I have the distinct impression that the accused devised a strategy which they would follow in the hearings, to the end of time, to avoid a trial taking place on the charges preferred against them which the Trial Committee was elected to hear and determine.

DAVID MITTLEMAN

Sworn to before me this

30th day of July, 1976.

CARMEN E. MALDONADO
Notary Public State of New York
No. 4616797
Qualified in Kings County
Commission Expires March 30, 1977

Notary

JA 253

JUSTICE

INTERNATIONAL LADIES' GARMENT WORKERS' UNIO

October 15-November 1, 1975

at p. 19

LOCAL 10 MEMBERS

REGULAR MEETING

Monday, November 24
6:30 P.M.
Statler-Hilton Hotel
Terrace Room
(lobby level)
33rd St. and 7th Ave.

JUSTICE

INTERNATIONAL LADIES' GARMENT WORKERS' UNIO

November 15, 1975

at p. 5

LOCAL 10 MEMBERS

REGULAR MEETING

Monday, November 24
6:30 P.M.
Statler-Hilton Hotel
Terrace Room
(lobby level)
33rd St. and 7th Ave.

AMALGAMATED LADIES' GARMENT CUTTERS' UNION

JA 254 AREA CODE 212
NEW YORK, N.Y. 10018 • 695-0850
8 WEST 40th STREET

DOLGEN
Manager-Sec'y
JAM WEISS
Assistant Manager
KLEIN
Sec'y-Executive Board

February 10, 1975

r. Nat Klein
ecretary - Executive Board
algamated Ladies' Garment Cutters Union-Local 10
.L.G.W.U.
18 West 40th Street
ew York, N.Y. 10018

ear Sir and Brother:

I, a member of Local 10, I.L.G.W.U., hereby prefer charges against) VEGA LEDGER #17937, TOMAS ROSARIO LEDGER #26283 and RAYMOND CABEL LEDGER #25777, for violations of the following provisions of the I.L.G.W.U. Constitution and By-Laws, pursuant to a pre-determined and calculated plan by:

1. Interfering with the functions and powers of officers, business agents, representatives, employees and agents of Local 10, I.L.G.W.U., in violation of subdivision (E) of Section 1, Article 20 of the constitution.

2. Interfering with the functions and powers of Local 10, I.L.G.W.U., in violation of subdivision (F) of Section I, Article 20 of the constitution.

3. Disobeying and failing to comply with orders and decisions of officials of Local 10, I.L.G.W.U., in violation of subdivision (C) of Section I, Article 20 of the constitution.

4. Action and conduct detrimental to the interests of the I.L.G.W.U., and of Local 10, in violation of subdivision (I) of Section I, Article 20 of the constitution: and

5. Action and conduct unbecoming a member, occuring in connection with membership in the I.L.G.W.U. and employment in its jurisdiction, in violation of subdivision (L) of Section I, Article 20 of the Constitution.

EXHIBIT 2

BEST COPY AVAILABLE

AMALGAMATED LADIES' GARMENT CUTTERS' UNION

218 WEST 40th STREET NEW YORK, N.Y. 10018 JA 255 AREA CODE 212 • 695-0850

BE DOLGEN
Manager-Sec'y

WILLIAM WEISS
Assistant Manager

NAT KLEIN
Sec'y-Executive Board

In that on January 29, 1975 each in conjunction with each other, jointly took possession of the office of the Manager of Local 10, obstructed and interfered with the conduct of the usual business of Local 10, interfered with the functioning of the business agents and officers of Local 10, and refused to leave said office when ordered to do so by officers of Local 10.

And further, in that Raymond Cabel subsequently left the office of the Manager, proceeded on to the waiting room in the premises of Local 10, and sought to provoke physical action against the elected administration of Local 10, by members of Local 10 who were in such waiting room.

ABE DOLGEN

218 West 40th Street
ADDRESS

12352
LEDGER #

EXHIBIT 2

ILGWU

SOL C. CHAIKIN
PRESIDENT
SECRETARY-TREASURER

WILBUR DANIELS
EXECUTIVE VICE-PRESIDENT

HOWARD MOLISANI
FIRST VICE PRESIDENT

DAVID DUBINSKY
LOUIS STULBERG
HONORARY PRESIDENTS

GENERAL EXECUTIVE BOARD
SHELLEY APPLETON
MORRIS BIALIS
NICHOLAS S. BONANNO
ISRAEL BRESLOW
SIMON BRESNER
ABE DOLGEN
DAVID GINGOLD
SOL GREENE
MURRAY GROSS
SOL HOFFMAN
MATTIE JACKSON
SAM JANIS
EDWARD KRAMER
DOUGLAS LEVIN
ENOCH MENDELSUND
SALVATORE NOTO
JULIUS RAMIREZ
WILLIAM ROSS
EDWARD SCHNEIDER
MATTHEW SCHOENWALD
FREDERICK SIEMS
CORNELIUS WALL

October 15, 1975

TO: Ovidio Vega, 373 E. 188th St., Bronx, N.Y. 10058
Raymond Cabel, 2190 Brigham St., Bklyn, N.Y. 11229
Tomas Rosario, 1295 Spofford Ave., Bronx, N.Y. 10474, (Apt. 18)
Abe Dolgen, Local 10, ILGWU, 218 W. 40th St., New York, N.Y. 10018
Nat Klein, Secy., Executive Board, Local 10, ILGWU, 218 W. 40th St., New York, N.Y. 10018

Dear Sir and Brother:

Enclosed please find Decision of the General Executive Board I.L.G.W.U., rendered October 8, 1975, in the matter of the charges preferred by Abe Dolgen against Ovidio Vega, Raymond Cabel and Tomas Rosario.

Fraternally yours,

JAMES LIPSIG
Assistant Executive Secretary

jl/hw

ILGWU

SOL C. CHAIKIN
PRESIDENT
GENERAL SECRETARY-TREASURER

WILBUR DANIELS
EXECUTIVE VICE PRESIDENT

E. HOWARD MOLISANI
FIRST VICE PRESIDENT

DAVID DUBINSKY
LOUIS STULBERG
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MURRAY GROSS
SOL HOFFMAN
MATTIE JACKSON
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EDWARD KRAMER
DOUGLAS LEVIN
HENOCH MENDELSUND
SALVATORE NOTO
JULIUS RAMIREZ
WILLIAM ROSS
EDWARD SCHNEIDER
MATTHEW SCHOENWALD
FREDERICK SIEMS
CORNELIUS WALL

Decision of General Executive Board, ILGWU, on Charges by Abe Dolgen against Tomas Rosario, Ovidio Vega and Raymond Cabel

Although the three accused members of Local 10 have failed to utilize their right under the ILGWU Constitution to appeal to the full General Executive Board of the ILGWU (GEB), from the attached decision of its Appeal Committee, the GEB, on its own motion, has reviewed that decision, pursuant to its authority under Article 23, Section 5, subd.(d), of said Constitution.

It is the decision of the GEB that because of the special circumstances surrounding the case, and the fact that the charges have already been heard twice by the Executive Board of Local 10, the charges shall be reheard de novo by a Trial Committee of Local 10, under the following conditions:

1) The Trial Committee shall be composed of rank-and-file members of Local 10 and shall consist of five (5) members and two (2) alternates selected by the membership of Local 10 at the next general membership meeting of the Local. Persons serving on the Trial Committee shall not have previously been involved in hearing the charges or in making the charges or in defending against them.

2) The Trial Committee shall select one of its members as Chairman. It shall also select a Secretary from among its members who shall prepare the official minutes of the hearing which shall be filed in the offices of Local 10. The official minutes or true copies thereof shall be made available for inspection in the offices of Local 10 by either the charging party or the accused upon their written request therefor. True copies of the minutes shall be furnished if so requested in writing.

3) Should the Trial Committee find the accused or any of them guilty, any penalty which might be imposed shall not include disqualification as a candidate for Union office.

Tomas Rosario
1291 Spofford Ave. Apt. 6-D
Bronx, N.Y., 10474

December 22, 1975. JA 258

Mr. David Mittleman
c/o Nat Klein
Secretary Executive Board
Local 10, I.L.G.W.U.
218 West 40th Street
New York, N.Y., 10018

Dear Sir and Brother:

On December 18, 1975, at the Council Room of Local 10, after you officially gave the call for the trial hearing, and you read the letter and Decision of the General Executive Board, I.L.G.W.U., you recognized brother Bill Harris, the representative for the accuser Manager Abe Dolgen, and he presented his oral arguments and objections without any interruption.

But you ignored our representative's request to raise an issue on the arguments and objections presented by the accuser's representative, denying us the right to make a rebuttal, and you also refused to accept our written statement.

You arbitrarily adjourned the hearing that had been schedule that date without allowing us or our representatives to speak or even submit a written statement.

On behalf of myself and my fellow defendants I therefore submit the enclosed statement and ask that it be made a part of the record of the hearing.

Also, on behalf of all defendants I protest that the adjournment was designed and carried out for the purpose of harassment and intimidation.

I also enclose photostatic copies of my letters to Nat Klein and James Lipsig, requesting photostatic copies of the official minutes of certain proceedings. These minutes are necessary in our preparation of a defense to the charges against us.

Although demands has previously been made by defendants for copies of minutes of certain proceedings, in advance of the trial hearing, they have not yet been supplied.

Accordingly, we repeat our demand that such minutes be supplied to us in advance of the arbitrarily-adjourned hearing.

We await your response to this request and await also your notification as to the date the trial hearing will be held.

Fraternally,

Tomas Rosario

Tomas Rosario #26238

Enclosures.

EXHIBIT 4A

STATEMENT TO THE THIRD TRIAL COMMITTEE
TO TRY US ON DOLGEN'S CHARGES

JA 259

For the third time we appear for a Moscow- style trial hearing on the charges filed against us by Dolgen. Dolgen's charges against us are nothing but lies and we are not guilty. Nevertheless, we have already been twice convicted by Dolgen's kangaroo courts and twice suspended from union activities as disciplinary punishment. The first such suspension went into effect after the hearing of February 25,1975 and remained in effect for two months, until April 28, 1975. The second went into effect after the second kangaroo proceeding of May , 1975 and so far as we know it is still in effect.

Theoretically, this Trial Committee was to be selected by the membership of Local 10. But in reality the membership had no real say in choosing it. Its selection was rigged by Dolgen. No notice of the membership meeting of November 24, 1975 was sent out to members. Notice was not even posted on the Local's bulletin board until a week before the meeting. And though notice was printed in the English-language edition of "Justice", it was deliberately omitted from the Spanish- and Italian- language editions. As a result, barely 125 members were present at the meeting. And at the meeting, the members were denied the right to vote by secret ballot. Instead, Dolgen imposed a hand-voting procedure, in which he and the business agents were allowed to intimidate members.

We have demanded copies of the minutes of our previous trials and appellate hearings. We have been denied them. In preparation for this hearing -- and in order to prepare for it -- we have requested copies of the minutes of the previous trials and of the membership meetings and executive board meetings at which the charges against us have been considered and/or reported upon. We have been denied them. As a result we have been denied a fair opportunity to prepare for this trial hearing.

We protest the rigged manner in which this Trial Committee was chosen and the denial to us of minutes of previous trials and meetings which are necessary to us in preparation for this hearing.

At previous trials and appellate proceedings there has been no competent stenographer present and we have been denied the right to tape record the proceedings or to bring a competent stenographer with us. Since we have been denied such right, and expect to be denied the right to have a stenographer record the proceedings, we have not gone to the expense of hiring a stenographer on this occasion. However, each of us demands and insists upon the right to bring a tape recorder and to record the proceedings thereon. On the past, "official" minutes of these proceedings have been "doctored", i.e., falsified. We know, judging by our past experience, that whatever minutes are taken by you they will be treated as the "record" of these proceedings on any appeal within the labor organization.

We are bringing with us a tape recorder so that we may take an accurate record of the proceedings. We are not interfering with the

EXHIBIT 4B

taking of official notes by the Trial Committee's Secretary. We insist upon our right to make our own record in order to protect ourselves against falsification and/or innocent errors in those official notes, which in the past have been"doctored", i.e., falsified.

Accordingly, we insist upon our right to have these proceedings recorded by us on a tape recorder; such right to make a full and accurate record of proceedings is inherent in the concept of a fair trial.

Having previously experienced the Moscow-style trials conducted by the present officialdom of Local 10, none of us expects a fair trial by you. Nevertheless each of us intends to exercise and exhaust all reasonable remedies available to us within the labor organization. Each of us protests, however, that the disciplinary harassment of us is being carried on as an attempt by Dolgen and his stooges to intimidate rank-and-file members of Local 10 in the exercise of their Union rights.

Dolgen's charges against us are lies. He in effect admitted that they are lies when, after demanding that the police arrest two of us on substantially the same charges (and demanding that they arrest the third of us if only they could find him), Dolgen failed to show up in court to testify under oath, in front of a judge that he could not manipulate, in support of those charges.

Each of us denies the charges. Specifically, each of us denies that he ever "took possession" of any local 10 office or "obstructed" or "interfered with" the business of Local 10 or of any business agent, or refused lawful orders, or sought to provoke physical action against anyone. Dolgen's charges are lies and Dolgen himself is a liar, who lacks the courage to stand up in court in support of his charges.

Dolgen is using you to harass us because he is not man enough to face a court of law. Go ahead, conduct your hearing.

Tomas Rosario
TOMAS ROSARIO
Ledger #26288

Raymond Cabel
RAYMOND CABEL
Ledger # 25777

Ovidio Vega
OVIDIO VEGA
Ledger # 17937

December 18, 1975.

EXHIBIT 4F

Tomas Rosario
1291 Spofford Ave. Apt. 6-B
Bronx, N.Y., 10474

December 22, 1975.

JA 261

Mr. Nat Klein
Secretary Executive Board
Local 10, I.L.G.W.U.
218 West 40th Street
New York, N.Y., 10018

Dear Sir and Brother:

In the matter of the charges preferred by Manager Abe Dolgen on February 10, 1975 and May 8, 1975 against Ovidio Vega, Raymond Cabel and Tomas Rosario, the undersigned request photostatic copies of the following minutes:

1. Photostatic copy of the minutes taken by brother Nat Klein at the trial held on Tuesday, February 25, 1975.

2. Photostatic copy of the minutes taken by brother Milton Strikler at the trial held on Wednesday, May 21, 1975.

3. Photostatic copy of the minutes taken by brother Nat Klein at the Local 10 General Membership Meeting held on Monday, November 24, 1975, at the Statler-Hilton Hotel, in the matter of the election of the Trial Committee by the membership of Local 10, by Decision of the General Executive Board, I.L.G.W.U., rendered October 8, 1975.

4. Photostatic copy of the minutes taken by brother Harold Brodsky, Secretary of the Trial Committee, at the hearing held on December 18, 1975.

These minutes are necessary for the undersigned to have a fair opportunity to prepare and present a defense at the next trial which will be held in three weeks, according to decision of adjournment by brother David Mittleman at the trial held on December 18, 1975.

Please, reply to us immediately, by mail to Tomas Rosario, at the address given at the head of this letter.

Fraternally,

Tomas Rosario
Ledger #26238

Raymond Cabel
Ledger #25777

Ovidio Vega
Ledger #17937

EXHIBIT 4C

Tomas Rosario
1291 Spofford Ave., Apt. 6-B
Bronx, N.Y., 10474

December 22, 1975.

Mr. James Lipsig
Assistant Executive Secretary
International Ladies' Garment Workers' Union
1710 Broadway
New York, N.Y., 10019

Dear Sir and Brother:

In the matter of the charges preferred by Manager Ace Dolgen on February 10, 1975 and May 8, 1975 against Ovidio Vega, Raymond Cabel and Tomas Rosario, the undersigned request photostatic copies of the minutes taken by you at the GEB Appeal Committee's hearings held on Tuesday, April 8, 1975 and on Tuesday, July 22, 1975 in the Council Room at the General Office, 1710 Broadway.

These minutes are necessary for the undersigned to have a fair opportunity to prepare and present a defense at the next trial which will be held in three weeks, according to decision of adjournment by the chairman, brother David Rittleman, at the trial held on December 18, 1975.

Please, reply to us immediately, by mail to Tomas Rosario, at the address given at the head of this letter.

Fraternally,

Tomas Rosario
Ledger # 26238

Raymond Cabel
Ledger #25777

Ovidio Vega
Ledger #17937

EXHIBIT AD

2838 202nd Street
Bayside, N.Y. 11360
December 24, 1975

Mr. Tomas Rosario
1291 Spofford Avenue Apt. 6B
Bronx, N.Y. 10474

Dear Brother Rosario:

I have received your letter of December 22, 1975 and this is my answer to it.

Some of your statements are not true. I did not act arbitrarily at any time.

In the first paragraph of your letter you write that "brother Bill Harris, the representative for the accuser Manager Abe Dolgen" was recognized by me and "presented his oral arguments and objections without any interruption". In the first place, the charges against you and Brothers Vega and Cabel, a copy of which I have, were made against you by Brother Dolgen as a member of Local 10. In the second place, all Brother Harris stated at the meeting was that he represented Brother Dolgen in the case. I acknowledged this statement just as I did the statement by Brothers Kurtz and Spitzer that they represented you and Brothers Vega and Cabel.

Then Brother Harris asked me to read the October 8, 1975 decision of the General Executive Board ordering a new trial for the three of you. I did so. Brother Harris then called the attention of the Trial Committee to the fact that you had a tape recorder in front of you which was in operation and stated that only the Secretary of the Trial Committee could take the official minutes of the meeting and asked the Trial Committee to order that the tape recorder be removed from the hearing room.

After conferring with the other brothers of the Trial Committee, I ruled, in accordance with their decision, that the tape recorder would have to be removed from the hearing room, otherwise, the hearing would not go on. You did not remove the tape recorder. After conferring again with the other members of the Trial Committee, I adjourned the meeting of the hearing three weeks from December 18, 1975 to give you an opportunity to decide whether you would

EXHIBIT 5

proceed with the hearing without a tape recorder or any other electronic recording device and advised you that if you again produced a tape recorder or any other electronic recording device, the hearing would proceed in the absence of the accused.

It was after the meeting had been adjourned that you proposed to read a Statement, the contents of which I then did not know but a copy of which you enclosed in your letter to me. Since the meeting had already been adjourned and Brother Harris had already left the hearing room and your tape recorder was still in motion, I refused, with the consent of the other Trial Committee members, to hear your Statement.

Your Statement, therefore, will not be made part of the minutes of the meeting of the Trial Committee held on December 18, 1975.

If on January 8, 1975, the adjourned date of the hearing, you and the other accused come to the hearing without a tape recorder or any other electronic recording device, your Statement will certainly be listened to by the Trial Committee. And if you request, it will be made part of the record of that hearing. However, if you and the other accused refuse to be cross-examined on it, I cannot now know what weight the Trial Committee will give it.

I cannot go into the question, at this time, of the minutes you require of Brothers Klein and Lipsig. Neither I nor the Trial Committee can make any ruling until we hear the arguments why these documents are necessary to prepare for a new trial and why the minutes requested have been refused. Our Trial Committee will make this ruling only if you appear at the adjourned hearing without a tape recorder or any other electronic recording device and after we hear the arguments.

The trial hearing in your case has been adjourned to January 8, 1975, at 6:30 P.M. in the Local 10 Council Room on the seventh floor, 218 West 40th Street, New York, N.Y. 10018.

Fraternally yours,

David Mittleman

Dave Mittleman, Chairman
Trial Committee

cc: Ovidio Vega
Raymond Cabel

EXHIBIT 5

Tomas Rosario
1291 Spofford Avenue
Bronx, N.Y., 10474

January 28, 1976

David Mittelman
c/o Nat Klein, Secretary-Exec. Bd.
Amalg. Ladies' Garment Cutters' Local 10
Int'l Ladies' Garment Workers' Union
218 West 40th Street
New York, N.Y., 10018

Dear Brother Mittelman:

On January 8, 1976, Brothers Ovidio Vega, Ray Cabel and I appeared, at the request of the Trial Committee that had been impaneled to try us on the charges filed by Manager Dolgen, prepared for trial. You announced that you would conduct the trial "without" us; you thereupon led the entire trial committee to one of the offices of the business agents, locked the door behind you and then (so we are advised) proceeded to conduct a "trial" from which we were excluded.

Ever since January 8, we have been waiting for the Trial Committee's decision in our "trial." We have received no notification of any decision.

Please advise me by return mail whether there is of has been any decision and what that decision is.

Fraternally,

Tomas Rosario
LEDGER #21698

P.S. In addition to the above, I request that I be furnished with true copies of the official minutes of the trial hearing.

EXHIBIT 6

2838 202nd Street
Bayside, N.Y. 11360
January 29, 1976

Mr. Tomas Rosario
1291 Spofford Avenue Apt. 6B
Bronx, N.Y. 10474

Dear Brother Rosario:

I have received your letter dated January 28,1976. Without commenting on the erroneous statements made in the first paragraph of your letter, I wish to advise ybu that the Trial Committee has been convened to meet tonight for the purposes of rendering a decision on the charges preferred by Brother Dolgen against you and Brothers Ovidio Vega and Raymond Cabel.

Our decision and the entire records of the case will be filed with Local 10 by handing the same to the Secretary-Executive Board of Local 10. You will undoubtedly hear from him in the very near future.

Fraternally yours,

David Mittleman

David Mittleman, Chairman
Trial Committee

EXHIBIT 7